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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. [redacted]19

THE PEOPLE OF THE STATE OF ILLINOIS *EX REL.* JOHN McNICHOLS, PLAINTIFFS IN ERROR,

vs.

JAMES PEASE, SHERIFF OF COOK COUNTY, ILLINOIS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

FILED JANUARY 30, 1908. A.

(20,072.)

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(20,072.)

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No. 193.

THE PEOPLE OF THE STATE OF ILLINOIS *EX REL.* JOHN McNICHOLS, PLAINTIFFS IN ERROR,

vs.

JAMES PEASE, SHERIFF OF COOK COUNTY, ILLINOIS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Hon. the Judges of the Supreme Court of the State of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said Supreme Court of the State of Illinois, before you, or some of you, being the highest court of law or equity of the said state in which a decision could be had in the said suit between the People of the State of Illinois *ex rel.* John McNichols, plaintiff in error, and Thomas E. Barrett, Sheriff of Cook County, defendant in error, wherein was drawn in question the validity of a statute of the State of Wisconsin, and the right and privilege of the said John McNichols under the statute of Congress pertaining to interstate extradition and under the fourth amendment to the Constitution of the United States.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given that then under your seal, distinctly in open court you send the record and proceedings aforesaid with all the things concerning the same to the Supreme Court of the United States, together with this writ so that you may have the same at Washington on the 2nd day of February next in said Supreme Court, to be then and there held that the record and proceedings aforesaid being inspected, the said
2 Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 3rd day of January A. D. 1906.

[Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.]

MARSHALL E. SAMPSELL,
Clerk Cir. Ct. of the U. S., Nor. Dist. of Ills.

Allowed by,
JAMES H. CARTWRIGHT,
Chief Justice of the Supreme Court of the State of Illinois.

Filed Jan. 5 1906.

C. MAMER,
Clerk of Supreme Court.

3 In the Supreme Court of Illinois.

UNITED STATES OF AMERICA, *ss:*

Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of Illinois.

PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* JOHN MCNICHOLS, Plaintiff in Error,

vs.

THOMAS E. BARRETT, Sheriff of Cook County, Defendant in Error.

Petition for a Writ of Habeas Corpus.

I, Christopher Mamer, Clerk of said Supreme Court, do hereby certify that on the Fifth day of January in the year of our Lord One Thousand Nine Hundred and Six, a copy of the foregoing Writ of Error for Plaintiff in error was lodged in my office, at Springfield, Illinois.

Witness my hand and the seal of said Court, this Fifteenth day of January, A. D. 1906.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of Supreme Court.

4 UNITED STATES OF AMERICA, *ss:*

The President of the United States to Thomas E. Barrett, Sheriff of Cook County, Illinois, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at the City of Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's office of the Supreme Court of the State of Illinois, wherein the People of the State of Illinois, on the relation of John McNichols, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable James H. Cartwright, Chief Justice of the Supreme Court of the State of Illinois, this third day of January, in the year of our Lord one thousand nine hundred and six.

JAMES H. CARTWRIGHT,
Chief Justice of the Supreme Court of the State of Illinois.

Filed Jan. 5 1906.
C. MAMER,
Clerk of Supreme Court.

[Endorsed:] Filed Jan. 5 1906 C. Mamer Clerk of Supreme Court.

5 UNITED STATES OF AMERICA, *ss:*

Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of Illinois.

PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* JOHN MCNICHOLS, Plaintiff in Error,
vs.
THOMAS E. BARRETT, Sheriff of Cook County, Defendant in Error.

Acceptance of Service to the Citation.

On this 6th day of January, A. D. 1906, in the County of Cook and State of Illinois, I, Thomas E. Barrett, Sheriff of Cook County and defendant in error in the above entitled cause, do hereby accept and acknowledge full service of the citation issued in the above entitled case by the Hon. James H. Cartwright, Chief Justice of the Supreme Court of the State of Illinois, directed to me, by which citation I am cited and admonished to be and appear before the Supreme Court of the United States within thirty days from January 3, A. D. 1906, as defendant in error in the above entitled case, and also acknowledge receipt of a true copy of said citation, and waive any further service.

THOMAS E. BARRETT,
Sheriff of Cook County, Defendant in Error.

6 In the Supreme Court of Illinois.

UNITED STATES OF AMERICA, *ss:*

Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of Illinois.

PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* JOHN MCNICHOLS, Plaintiff in Error,
vs.
THOMAS E. BARRETT, Sheriff of Cook County, Defendant in Error.

Petition for a Writ of Habeas Corpus.

I, Christopher Mamer, Clerk of said Supreme Court, do hereby certify that on the Fifth day of January in the year of our Lord One Thousand Nine Hundred and Six, a copy of the foregoing Citation was lodged in my Office, at Springfield, Illinois.

Witness my hand and the seal of said Court, this Fifteenth day of January, A. D. 1906.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of Supreme Court.

7 In the Supreme Court of Illinois.

4614.

THE PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* JOHN MCNICHOLS
v.
THOMAS E. BARRETT, Sheriff.

Petition for Writ of Habeas Corpus.

I, Christopher Mamer, Clerk of the Supreme Court of Illinois, and keeper of the records and files thereof, by virtue of the foregoing writ of error and in obedience thereto do hereby certify that the following pages numbered from eight (8) to forty three (43), both inclusive, contain a true, perfect and complete copy of the record and proceedings had in the above entitled cause in said Court, including no opinion of the Court none having been filed, and that pages forty four (44) to forty five inclusive contain a true and correct copy of the assignment of errors upon said record filed in said Court on the fifth day of January A. D. 1906, the original of which remain on file and of record in my office.

In Testimony Whereof I have hereunto set my hand and caused the seal of the said Supreme Court of Ilinois to be hereunto affixed at Springfield, Illinois, this Fifteenth day of January A. D. 1905.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of Supreme Court.

8 At a Supreme Court, begun and held at Springfield on Tuesday, the Fifth day of December in the year of our Lord one Thousand Nine hundred and Five, within and for the State of Illinois.

Present: James H. Cartwright, Chief Justice; Benjamin D. Magruder, Justice; Carroll C. Boggs, Justice; James B. Ricks, Justice; Jacob W. Wilkin, Justice; John P. Hand, Justice; Guy C. Scott, Justice; William H. Stead, Attorney General; Benjamin H. Brainerd, Sheriff.

Attest:

CHRISTOPHER MAMER, *Clerk.*

Be it remembered, to-wit: on the Fifteenth day of December A. D. 1905, the same being one of the days of the term of Court aforesaid, there was filed in said Court by Respondent his petition for a writ of *habeas corpus,* which petition is in the words and figures following.

9 (Copy.)

STATE OF ILLINOIS, *ss:*

Supreme Court of the State of Illinois.

THE PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* JOHN MCNICHOLS, Relator,

vs.

THOMAS E. BARRETT, Sheriff of Cook County.

Petition of John McNichols for a Writ of Habeas Corpus.

To the Honorable Supreme Court of the State of Illinois:

Your petitioner, John McNichols, complains and respectfully represents and states to this Honorable Court that he is a citizen of the State of Illinois, residing therein in the City of Chicago and County of Cook, and is now imprisoned in said County and deprived of his liberty by Thomas E. Barrett, the sheriff of said County, by virtue of a certain extradition warrant issued by the Governor of the State of Illinois upon the requisition and demand of the Governor of the State of Wisconsin, and your petitioner exhibits as a part of his petition a copy of said extradition warrant, which is hereto attached marked Exhibit "A," which imprisonment is illegal and contrary to law; because of the facts and reasons hereinafter set forth.

Your petitioner shows that said extradition warrant is *prima facie* void; and suggests the following reasons:

First. That it is not addressed to any particular officer or person to serve it.

Second. That it does not show upon its face that the Governor of Illinois was furnished with a copy of an indictment found or
10 an affidavit made before a magistrate charging your petitioner with a crime, as required by Section 5278 of the Revised Statutes of the United States.

Third. That it does not show that the Governor of Illinois was presented or furnished with legitimate or competent evidence that at such time your petitioner was a fugitive from justice.

Your petitioner further shows that said extradition warrant was, as a matter of fact, issued without authority and contrary to law and without a proper demand and showing therefor by the Governor of the State of Wisconsin; in proof whereof your petitioner herewith exhibits to this Honorable Court, certified to by the Honorable James Rose, Secretary of State, and under the Great Seal of the State of Illinois, a true copy of the requisition and documents thereto attached, from the Governor of the State of Wisconsin, which requisition with the documents thereto attached constitute the sole demand and showing by the Governor of the State of Wisconsin for the surrender of your petitioner, upon which showing the said extradition warrant issued; which certified copy of said requisition and documents is hereto attached and marked Exhibit "B."

Your petitioner further shows that the requisition and documents thereto attached, and which are set out and attached to this petition by certified copy, as aforesaid, do not constitute a proper basis for said extradition warrant, and your petitioner respectfully shows to this Honorable Court the following reasons therefor:

First. There is no legitimate evidence that your petitioner was in the State of Wisconsin on the 30th day of September, A. D. 1905, the time of the alleged offense, and that he subsequent to said offense fled to the State of Illinois.

Second. The supposed complaint set out among said papers and documents does not in either substance or form possess the character and quality of an affidavit charging an offense, as required by Section 5278 of the Revised Statutes of the United States; that the same is vague and uncertain; appears to be made by the chief of the
11 police of the City of Kenosha; does not show that he has any personal knowledge of the facts charged; nor does it give any reason why an affidavit was not made by Thomas Hansen from whom it was alleged the certain moneys was stolen, and is not authenticated, the supposed authentication following said complaint, making no reference to said complaint but purporting to be to the *acknowledgment* of some other instrument.

Third. That the warrant set out in said papers is insufficient and not duly authenticated.

Your petitioner further represents that he is advised by counsel and so charges the fact to be, that under the statutes and practice of the State of Wisconsin, that warrants issued by a magistrate on a charge of larceny are not based upon an affidavit or affidavits charging the offense, but upon oral evidence heard by the magistrate; and that such affidavit as set out with said requisition is not an affidavit required by the laws and practice of the State of Wisconsin as evidential basis for a warrant; and is not in compliance with the provisions of Section 5278 of the Revised Statutes of the United States, which requires that the Governor of the demanding State shall furnish to the Governor upon whom the demand is made a copy of an indictment found or affidavit made before a magistrate charging the offense.

Your petitioner further shows that he has heard Thomas Hansen testify in a certain *habeas corpus* proceeding heretofore pending regarding this same matter, the said Thomas Hansen stating in his testimony that he was the same person *was* mentioned in said complaint, and the said Thomas Hansen then and there testifying that the said supposed crime occurred on September 30, 1905, at the hour of two P. M. about a block and a half from the North Western depot in Kenosha, Wisconsin; and your petitioner states that he was not in the State of Wisconsin on September 30, 1905, and did not commit the said offense, and in further proof thereof your petitioner herewith presents and attaches to this petition the affidavits of John F. Graff, William Oakley, Simon F. Bower, John A. Dennison, and Hugh Campbell, the same being marked respectively Exhibits "C," "D," "E," "F," and "G."

12 Your petitioner further states that he is now not in custody by virtue of the process of any Court or judge of the United

States, nor is he in custody by virtue of any final judgment or decree of any competent court of civil or criminal jurisdiction or of any execution issued upon such judgment or decree, nor for any treason, felony or other crime committed in any other state or territory of the United States by which he ought or is liable by the Constitution and laws of the United States to be delivered up to the executive power of such state or territory other than that set forth in this petition; and that the only cause for his arrest and detention by the said Thomas E. Barrett, sheriff of Cook County, is the said warrant of extradition above referred to.

Your petitioner further shows that previous to the issuance of said extradition warrant, that in the City of Chicago, County of Cook and State of Illinois, he was arrested upon a fugitive warrant issued by a justice of the peace of the City of Chicago, based upon the said supposed criminal offense; and that thereupon he presented his petition to the Criminal Court of Cook County for a writ of *habeas corpus*, setting forth the fact that he was not a fugitive from justice; and that after the filing of said petition for a writ of *habeas corpus* in the Criminal Court of Cook County, the said demand and requisition of the Governor of the State of Wisconsin, upon the Governor of the State of Illinois, was made and the said extradition warrant was issued by the Governor of the State of Illinois in response thereto; and thereupon the said extradition warrant was presented and displayed in open Court in the Criminal Court of Cook County, before the Hon. John Gibbons, then presiding as judge of said Court; and that thereupon your petitioner through his counsel introduced in evidence the certified copy of the requisition papers hereto attached and marked Exhibit "B" for the purpose of showing that said extradition warrant was illegal and void; and that while one of your petitioner's counsel was speaking upon said matter, the said Hon. John Gibbons as presiding judge of said Court suggested that the questions involved were of such grave importance that the
13 matter ought to be presented to the Supreme Court of the State of Illinois for its decision, and then and there over the protest of the respective counsel on both sides of the case suspended the argument and postponed the matter, in order to give an opportunity to prepare for presenting a petition to this Honorable Court; and that thereafter on the 14th day of December, A. D. 1905, the matter again coming up before the said Hon. John Gibbons, as judge of said Court, he, the said Hon. John Gibbons, entered a written order, that because of the grave questions involved in the case, that the Court on its own motion dismissed the petition, without expressing any opinion as to the merits of the case and remanded your petitioner to the custody of the sheriff of Cook County, with the express order that the said sheriff should not deliver your petitioner to the agent of the State of Wisconsin, until the hour of ten o'clock on Tuesday, the 19th day of December, A. D. 1905, in order that your petitioner might have an opportunity to present his petition to this Honorable Court; and your petitioner having been denied a hearing in the said Criminal Court of Cook County for the reasons

above set forth now presents this his petition before this Honorable Court.

And now your petitioner respectfully prays that this Honorable Court may issue its writ of *habeas corpus*, as provided by law, directing that Thomas E. Barrett, sheriff of Cook County, in the State of Illinois, produce the body of your petitioner before this Honorable Court, and by his return to said writ show the cause of the detention of your petitioner; and your petitioner prays that this Court may give unto him a hearing both as to matters of fact and matters of law; and that this Honorable Court order that your petitioner be discharged and released from the said custody and imprisonment.

(Signed) JOHN McNICHOLS,
Petitioner.

JOHN F. GEETING,
ROBERT E. CANTWELL,
Attorneys for Petitioner.

14 STATE OF ILLINOIS, *County of Cook*, ss:

John McNichols being first duly sworn, does upon his oath say, that he is the petitioner in the above petition for a writ of *habeas corpus;* that he has read the said petition and knows the contents thereof, and that the statement of facts therein made are true.

(Signed) JOHN McNICHOLS.

Subscribed and sworn to by John McNichols before me this 14th day of December, A. D. 1905.

[NOTARIAL SEAL.] ARTHUR W. DIXON,
Notary Public.

15 EXHIBIT "A."

STATE OF ILLINOIS,
EXECUTIVE DEPARTMENT.

Richard Yates, Governor of Illinois, to any Sheriff, Coroner or Constable, of any County of this State, Greeting:

The Executive Authority of the State of Wisconsin demands of me the apprehension and delivery of John McNichols Represented to be a fugitive from justice and has moreover, produced and laid before me the copy of an complaint and affidavit made by and before a properly empowered officer in and of the said State in accordance with the laws thereof charging John McNichols the person so demanded, with having committed against the laws of the said State of Wisconsin the crime of Larceny from the person which appears by the said copy of a complaint & affidavit & certified as authentic by the Governor of the said State now on file in the office of the Secretary of State of Illinois and being satisfied that said John McNichols is a fugitive from justice and has fled from the State of Wisconsin.

Therefore, in compliance with the constitution and the laws of

the United States and of this State in the name of the people of the State of Illinois, you are hereby commanded to arrest and secure the said fugitive John McNichols if he be found within the limits of this State and deliver him into the custody of Frederick W. Reinold the agent of Executive authority of the said state of Wisconsin appointed to receive the said fugitive.

Provided, such agent shall appear within six months from the time of the arrest, and the said agent is hereby empowered to transport the said fugitive, without hindrance or molestation of any sort or in any manner to the extreme limits of this State, in furtherance of his authority, he paying all costs and fees for the arrest, detention and delivery of the said fugitive. And you make due and formal return to this Department, of the time and manner in which this writ may be served.

16 In testimony whereof, I hereto set my hand and cause to be affixed the Great Seal of State.

Done at the City of Springfield, this 1st day of Dec. A. D. 1905, and of the Independence of the United States the 130th.

[SEAL.] CHARLES S. DENEEN.

By the Governor:
JAMES A. ROSE,
Secretary of State.

17 EXHIBIT "B."

STATE OF ILLINOIS,
DEPARTMENT OF STATE.

James A. Rose, Secretary of State, to all to whom these presents shall come, Greeting:

I, James A. Rose, Secretary of State of the State of Illinois, do hereby certify that the following and hereto attached is a true copy of Requisition from the Governor of Wisconsin on the Governor of Illinois for John McNichols, Filed in my office, December 1, 1905, the original of which is now on file and a matter of record in this office.

In testimony whereof, I hereto set my hand and cause to be affixed the great Seal of State.

Done at the City of Springfield this 2nd day of December, A. D. 1905.

[SEAL.] JAMES A. ROSE,
Secretary of State.

18 UNITED STATES OF AMERICA:

THE STATE OF WISCONSIN,
EXECUTIVE DEPARTMENT.

To his Excellency, the Governor of the State of Illinois:

Whereas, It appears by the annexed Papers, which I certify to be authentic, that John McNichols stand; charged by affidavit with the

crime of Larceney from the person (which I certify to be a crime under the laws of this State) committed in the County of Kenosha in this State and that he has fled from the justice of this State and taken refuge in the State of Illinois,

Now, therefore, pursuant to the provisons of the Constitution and Laws of the United States in such case made and provided, I do hereby require that the said John McNichols be apprehended and delivered to Frederick W. Reinold, who is duly authorized to receive and convey him to the State of Wisconsin, here to be dealt with according to law.

In testimony whereof, I have hereunto set my hand and caused the Great Seal of the State of Wisconsin to be affixed. Done at the City of Madison the thirtieth day of November, in the year of our Lord one thousand nine hundred and five.

[SEAL.] ROBERT M. LA FOLLETTE.

By the Governor:
W. L. HOUSER,
Secretary of State.

STATE OF WISCONSIN, *Kenosha County:*

In Justice's Court.

THE STATE OF WISCONSIN, Plaintiff,
against
JOHN MCNICHOLS, Defendant.

19 To His Excellency, Robert M. La Follette, Governor of the State of Wisconsin:

I, Robert Verne Baker, District Attorney in and for Kenosha County, do hereby apply for the requisition and return to the State of Wisconsin of one John McNichols whose full name is John McNichols, and who stands charged before Benjamin O. Sturges, a magistrate in and for the city of Kenosha, in said county with the crime of larceny from the person, which is alleged to have been committed in the city of Kenosha, in said County, on the 30th day of September, A. D. 1905, as more fully appears from the duly verified complaint, made and filed before said Benjamin O. Sturges, a justice of the peace within said county, a certified copy of which is hereto annexed and made a part hereof; that said defendant John McNichols, to avoid arrest and prosecution for said offense has fled from the jurisdiction of the State of Wisconsin, and is now a fugitive from justice, and is, as I am informed, within the jurisdiction of the State of Illinois, and I hereby certify that, in my opinion, the ends of justice require that the said John McNichols should be brought to the State of Wisconsin for trial, at public expense, and that I am willing that such expense shall be a charge upon the county in which the offense was committed, to-wit: The County of Kenosha.

I also certify that I have carefully examined into the facts and

circumstances, and that in my opinion, I have full and sufficient evidence to secure the conviction of the said fugitive John McNichols, of the crime charged in the complaint, a certified copy of which is hereto annexed and made a part hereof.

I designate, recommend and name Frederick W. Reinold, Chief of Police of the city of Kenosha, in said County, as a proper person to be appointed agent of the State of Wisconsin, and to whom the warrant may issue, to receive and convey the said John McNichols to the County of Kenosha in the State of Wisconsin, and certify that he has no private or personal interest in the arrest of the said fugitive, John McNichols.

I further certify that I am not aware that an application has ever been made for a requistion for the said John McNichols
20 which is the basis of this application. I am not aware, and verily believe, that the said fugitive, John McNichols, is now under criminal arrest for the crime charged by virtue of a notification from the police officials of the city of Kenosha, Kenosha county, Wisconsin.

I further certify that this demand for a requisition for the said fugitive, John McNichols, is made in good faith and with the sole intent to prosecute and punish him for said crime, and not to secure his return to the State of Wisconsin and afford opportunity to serve him with civil process, nor for the purpose of collecting a debt, nor for any private purpose whatsoever; and that, if the requisition applied for be granted, a criminal proceeding shall not be used for any of said objects.

I further certify that said charge against the said fugitive, John McNichols, is the offense of larceny from the person, in that he, the said John McNichols, did, on the 30th day of September, 1905, at the city of Kenosha, in said county of Kenosha, two hundred dollars of the money of Thomas Hansen, feloniously steal, take and carry away, and that a trial had in the State of Wisconsin shall be under the provisions of Section 4413 of the Revised Statutes of the State of Wisconsin for the year 1898, which said crime and the punishment thereof, is defined in said section aforesaid, and said section is as follows:

"Larceny from the person. Section 4413. Any person who shall commit the crime of larceny by stealing from the person of another shall be punished by imprisonment in the state prison not more than seven years nor less than one year, or by imprisonment in the county jail not more than one year nor less than three months or by fine not exceding two hundred dollars.

I further certify that said John McNichols was never a resident of the county of Kenosha, and came to the said city of Kenosha on the day of the commission of the crime, and departed therefrom the same day and I further certify that application for the arrest and return of said fugitive, John McNichols has not been made sooner because the said fugitive John McNichols, could not be
21 located or found before this date, although a warrant for his arrest had been issued by said justice of the peace shortly after the commission of the alleged crime.

Witness my hand at the city of Kenosha, in the county of Kenosha, Wisconsin, this 29th day of November, A. D. 1905.

Respectfully, ROBERT VERNE BAKER,
District Attorney, Kenosha County, Wisconsin.

STATE OF WISCONSIN, *County of Kenosha, ss:*

Fred W. Reinold, being first duly sworn and examined on oath by and before Benj. O. Sturges, a Justice of the Peace in and for said County, alleges that one John McNichols did, on the 30th day of September, A. D. 1905, at the city of Kenosha, in said County, Two Hundred (200) Dollars, lawful money of the United States, of the properties and monies of Thomas Hansen, then and there being found, from the person and against the will of the said Thomas Hansen, feloniously steal, take and carry away, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Wisconsin, and prays that the said John McNichols may be arrested and dealt with according to law.

FRED W. REINOLD.

Subscribed and sworn to this 2nd day of October, A. D. 1905.

BENJ. O. STURGES,
Justice of the Peace.

STATE OF WISCONSIN, *County of Kenosha, ss:*

I, Frank Waldo, Clerk of the Circuit Court of Kenosha County in the State aforesaid, do hereby certify, that Benj. O. Sturges, whose name is subscribed to the certificate of acknowledgment or
22 proof of the annexed Instrument and thereon written, was, at the time of taking such acknowledgment of proof, an acting Justice of the Peace, in and for said county, duly elected and sworn and authorized to take the same; that I am familiar with the handwriting of said justice, that his signature thereto is genuine; that full faith and credit are due and of right should be given to all his official acts as such, and that the same is executed and acknowledged in conformity with the laws of this State.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, this 29 day of November, A. D. 1905.

[SEAL.] FRANK WALDO, *Clerk.*

STATE OF WISCONSIN, *Kenosha County:*

In Justice Court.

CITY OF KENOSHA, STATE OF WISCONSIN, on Complaint of FRED W. REINOLD,
against
JOHN MCNICHOLS.

The State of Wisconsin to the Sheriff or any Constable of said County:

Whereas, Fred W. Reinold, has this day made complaint on oath, in writing, to the undersigned, a Justice of the Peace for said County, that John McNichols, did, on the 30th day of September, A. D. 1905, at the City of Kenosha, in said County, Two Hundred (200) Dollars, lawful money of the United States, of the properties and monies of Thomas Hansen, then and there being found, from the person and against the will of the said Thomas Hansen, feloniously steal, take and carry away, Contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the State of Wisconsin, and prays that the said John McNichols may be arrested and dealt with according to law.

Now, therefore, you are hereby commanded forthwith to apprehend the said John McNichols and bring him before me, to be dealt with according to law.

23 Given under my hand, at Kenosha, this 7th day of October, A. D. 1905.

BENJAMIN O. STURGES,
Justice of the Peace.

STATE OF WISCONSIN, *County of Kenosha, ss:*

I, Benj. O. Sturges, a Justice of the Peace in and for said County do hereby certify that the above and foregoing are true and correct copies of the complaint made and filed and the action of the State of Wisconsin against John McNichols, and of the warrant for the arrest of said defendant issued thereon by me; that Fred W. Reinold the person who made and filed the complaint in said action is a duly sworn and acting officer of the law and is credible and entitled to belief in all things.

Dated at Kenosha, Kenosha County, Wisconsin, this 29th day of November, A. D. 1905.

BENJ. O. STURGES,
Justice of the Peace.

Endorsed: "Let Warrant issue. Charles S. Deneen, Governor. Filed Dec. 1, 1905. James A. Rose, Sec'y of State.

24 STATE OF ILLINOIS, *County of Cook, ss:*

PEOPLE *ex Rel.* JOHN MCNICHOLS
vs.
THOMAS BARRETT, Sheriff Cook County.

Petition for Habeas Corpus.

John F. Drapp, being first duly sworn deposes and says that he resides at 662 W. Van Buren Street, in the City of Chicago, County and State aforesaid, that he is personally acquainted with John McNichols of Chicago, whose extradition proceedings are now pending and this affiant further upon his oath says that upon the 30th day of September A. D. 1905 the said John McNichols to this affiant's personal knowledge was in the City of Chicago at about the hour of 1 o'clock P. M. and that this affiant remained in the company of the said McNichols until after 2.15 P. M. and again met the said McNichols about three o'clock P. M. said day; this affiant further says that it would have been impossible for the said McNichols to have been in the City of Kenosha, State of Wisconsin, on the said 30th day of September A. D. 1905.

And further affiant saith not.

JOHN F. DRAPP.

Subscribed and sworn to before me this 12th day of December A. D. 1905.

[SEAL.] ROBERT CANTWELL.

25 STATE OF ILLINOIS, *County of Cook, ss:*

PEOPLE *ex Rel.* JOHN M. MCNICHOLS
vs.
THOMAS BARRETT, Sheriff Cook Co.

Petition for Habeas Corpus.

William Oakley, being first duly sworn deposes and says that he resides at 670 W. Van Buren Street, in the City of Chicago, County and State aforesaid; that he is personally acquainted with John M. McNichols of Chicago whose extradition proceedings are now pending and this affiant further upon his oath says that upon the 30th day of September A. D. 1905 said John M. McNichols to this affiant's personal knowledge was in the City of Chicago, the whole of the afternoon of the said day, this affiant and the said John M. McNichols during the said afternoon, being in attendance at a base ball game, in the said City of Chicago, between the Chicago and Boston teams, which said game was played at the West Side Ball Park.

And further affiant saith not.

(Signed) WILLIAM OAKLEY.

Subscribed and sworn to before me this 12th day of December A. D. 1905.

[SEAL.] ROBERT CANTWELL,
Notary Public.

26 STATE OF ILLINOIS, *County of Cook, ss:*

PEOPLE *ex Rel.* JOHN MCNICHOLS
vs.
THOMAS BARRETT, Sheriff Cook Co.

Petition for Habeas Corpus.

Simon F. Bowen, being first duly sworn deposes and says, that he resides at 1396 Ogden Avenue, in the City of Chicago, County and State aforesaid; that he is personally acquainted with John M. McNichols of Chicago, whose extradition proceedings are now pending and the affiant further upon his oath says that on the 30th day of September A. D. 1905, said John M. McNichols to this affiant's personal knowledge was in the City of Chicago whole of the afternoon of the said day, this affiant and the said John M. McNichols during said afternoon being in attendance at a baseball game in the said City of Chicago, between the Chicago and Boston teams, which said game was played at the West Side Ball Park.

And further affiant saith not.

(Signed) SIMON T. BOWEN.

Subscribed and sworn to before me this 13th day of December A. D. 1905.

[SEAL.] ROBERT CANTWELL,
Notary Public.

[Endorsed:] *Ex rel.* McNichols *vs.* Barrett. Copy of Pet. in Supr. Ct. Dec., '05.

27 STATE OF ILLINOIS, *County of Cook, ss:*

PEOPLE *ex Rel.* JOHN MCNICHOLS
vs.
THOMAS BARRETT, Sheriff Cook Co.

Petition for Habeas Corpus.

John A. Denison, being first duly sworn deposes and says, that he resides at 780 Jackson Boulevard, in the City of Chicago, County and State aforesaid; that he is personally acquainted with John McNichols of Chicago, whose extradition proceedings are now pending and the affiant further upon his oath says that on the 30th day of September A. D., 1905, said John McNichols to this affiant's personal knowledge was in the City of Chicago the whole of the

afternoon of the said day, this affiant and the said John McNichols during said afternoon being in attendance at a baseball game in the said City of Chicago, between the Chicago and the Boston teams, which said game was played at the West Side Ball Park.

And further affiant saith not.

JOHN A. DENNISON.

Subscribed and sworn to before me this 13th day of December A. D., 1905.

[SEAL.] ROBERT CANTWELL,
Notary Public.

28 STATE OF ILLINOIS, *County of Cook, ss:*

PEOPLE *ex Rel.* JOHN MCNICHOLS
vs.
THOMAS BARRETT, Sheriff Cook Co.

Petition for Habeas Corpus.

Hugh Campbell, being first duly sworn deposes and says, that he resides at 842 Homan Avenue, in the City of Chicago, County and State aforesaid; that he is personally acquainted with John McNichols of Chicago, whose extradition proceedings are now pending and the affiant further upon his oath says that on the 30th day of September A. D., 1905, said John McNichols to this affiant's personal knowledge was in the City of Chicago the whole of the afternoon of the said day, this affiant and the said John McNichols during said afternoon being in attendance at a baseball game in the said City of Chicago between the Chicago and Boston teams, which said game was played at the West side Ball Park.

And further affiant saith not.

(Signed) HUGH CAMPBELL.

Subscribed and sworn to before me this 13th day of December A. D., 1905.

[SEAL.] ROBERT CANTWELL,
Notary Public.

29 And afterward, to-wit: on the day aforesaid, relator by Counsel, moved the Court that the People's Writ of *Habeas Corpus*, issue, which motion is by the Court taken under advisement.

And afterward, to-wit on the Sixteenth day of December, A. D. 1905, the same being a day of the term of Court aforesaid, the following proceedings were by said Court had and entered of record, to-wit:

No. 4614.

THE PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* JOHN MCNICHOLS
vs.
THOMAS E. BARRETT, Sheriff.

Petition for Writ of Habeas Corpus.

And now on this day, the Court having duly considered the motion of Relator, for a writ of *habeas corpus*, and being now fully advised in the premises. It is considered by the Court that the People's Writ of *Habeas Corpus* issue herein, returnable forthwith, commanding Respondent to bring before this Court the body of John McNichols.

And afterward, to-wit: on the day last aforesaid, there was filed in said Court by the Respondent his answer to the People's Writs of *Habeas Corpus*, which answer is in the words and figures following, to-wit:

State of Illinois Supreme Court.

STATE OF ILLINOIS, *County of Sangamon, ss:*

The People of the State of Illinois to Thomas E. Barrett, Sheriff of Cook County:

You are hereby commanded that you do, forthwith, without excuse or delay, bring or cause to be brought and have the body of, John McNichols, who is unlawfully detained in your custody, as it is said, together with the time and cause of such imprisonment and detention by whatever name or addition he is known or called, before the Supreme Court of the State of Illinois, now sitting in its Court-room in the State Capitol, in the City of Springfield, Illinois. Then and there to perform and abide such order and direction as our said Supreme Court shall make in that behalf. Hereof, make due return, forthwith, under the penalty of what the law directs.

To the Coroner of Cook County to execute.

Witness, Christopher Mamer, Clerk of said Court and the seal thereof, this sixteenth day of December A. D. 1905.

CHRISTOPHER MAMER, *Clerk.*

By the *habeas corpus* act.

[SEAL.]

Service of above Writ of *Habeas Corpus* Hereby accepted this 16th day of December, A. D. 1905.

THOMAS E. BARRETT,
Sheriff of Cook County.
By JOHN J. HEALY,
State's Attorney of Cook County.

In the Supreme Court of Illinois, December Term, A. D. 1905.

THE PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* JOHN MCNICHOLS
vs.
THOMAS E. BARRETT, Sheriff of Cook County, *et al.*

Writ of Habeas Corpus.

Return to Writ.

To the Supreme Court of Illinois:

Thomas E. Barrett, Sheriff of the County of Cook and State of Illinois, to whom the annexed writ is directed, here and now respectfully makes return to the same, without here and now presenting to the Court the body of John McNichols, relator above named, the personal presence of the said relator, by stipulation in
31 writing having been waived by the parties to said writ, a copy of said stipulation being attached hereto and made a part of his return.

And I, as my further return to the writ aforesaid, respectfully certify that it is true that the said John McNichols, relator above named is confined and restrained of his liberty by this defendant, but that the said John McNichols is so restrained lawfully under and by virtue of a certain warrant of commitment, to-wit a Governor's warrant issued under the hand and seal of Charles S. Deneen, Governor of the State of Illinois, to me directed, a copy of which warrant is hereto annexed and marked Exhibit A and made a part hereof, and presented to this Honorable Court as in said writ commanded.

THOMAS E. BARRETT,
Sheriff.

By JOHN J. HEALY,
State's Attorney of Cook County;
Attorney for Thomas E. Barrett, Sheriff.

In the Supreme Court of Illinois, to the December Term, A. D. 1905.

PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* JOHN MCNICHOLS
vs.
THOMAS E. BARRETT, Sheriff.

Writ of Habeas Corpus.

Stipulation to Waive Presence of Relator.

And now comes the Relator John McNichols, by John F. Geeting, his attorney, and Thomas E. Barrett, defendant, by John J. Healy, State's Attorney of Cook County, his attorney, and here and now stipulates that at the return and hearing of the Writ of *Habeas Corpus* issued in the above cause, that it shall not be the duty of

the said defendant to bring the body of the relator in person before this Honorable Court, the personal presence of the relator
32 being hereby expressly waived.

JOHN McNICHOLS,
By JOHN F. GEETING,
Attorney for Relator.
THOMAS E. BARRETT,
By JOHN J. HEALY,
State's Attorney, Attorney for Defendant.

STATE OF ILLINOIS,
EXECUTIVE DEPARTMENT.

Charles S. Deneen, Governor of Illinois, to any Sheriff, Coroner or Constable, of any County in this State, Greeting:

The Executive Authority of the State of Wisconsin demands of me the apprehension and delivery of John McNichols, represented to be a fugitive from justice and has moreover, produced and laid before me the copy of a complaint and affadavit made by and before a properly empowered officer in and of the said State in accordance with the laws thereof charging John McNichols, the person so demanded, with having committed against the laws of the said State of Wisconsin the crime of Larceny from the person which appears by the said copy of a Complaint and Affidavit certified as authentic by the Governor of the said State now on file in the office of the Secretary of State of Illinois, and being satisfied that said John McNichols is a fugitive from justice and has fled from the State of Wisconsin.

Therefore, in compliance with the constitution and the laws of the United States and of this State in the name of the people of the State of Illinois, you are hereby commanded to arrest and secure the said fugitive John McNichols if he be found within the limits of this State and deliver him into the custody of Frederick W. Reinhold the agent of Executive Authority of the said State of Wisconsin, appointed to receive the said fugitive.

33 Provided, such agent shall appear within six months from the time of the arrest, and the said agent is hereby empowered to transport the said fugitive without hindrance or molestation of any sort or in any manner to the extreme limits of this State, in furtherance of his authority, he paying all costs and fees for the arrest, detention and delivery of the said fugitive. And you make due and formal return to this Department, of the time and manner in which this writ may be served.

In testimony whereof, I hereto set my hand and cause to be affixed the Great Seal of State. Done at the City of Springfield, this 11th day of December A. D. 1905, and of the Independence of the United States the 130th.

[SEAL.] CHARLES S. DENEEN.

By the Governor:
JAMES A. ROSE,
Secretary of State.

And afterward, to wit: on the 19th day of December A. D. 1905 it being a day of the term of Court aforesaid the following proceedings were by said Court had and entered of record, to wit:

4614.

PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* JOHN MCNICHOLS
v.
THOMAS E. BARRETT, Sheriff.

Petition for Writ of Habeas Corpus.

And now on this day come the parties hereto and this being one of the days set apart for the call of the docket under the rules of this Court, and it appearing to the Court that the Relator hath elected to stand on his petition for writ of *habeas corpus* together with briefs and arguments of counsel in support of his motion entered to
34 discharge the relator, and for costs, and the said respondent having elected to stand upon his answer and motion entered to remand the relator to the custody of respondent, and costs, and said motions being taken under advisement for final hearing, and the Clerk of this Court reporting that said cause is now ready to be taken, and said cause having been argued orally by John F. Geeting on behalf of the relator and by F. L. Barnett on behalf of the respondent is here submitted for the consideration and judgment of the Court: Therefore it is ordered by the Court that this cause be and the same is hereby taken under advisement.

And afterward, to-wit: on the 20th day of December A. D. 1905 it being a day of the term of Court aforesaid, the following proceedings were by said Court, had and entered of record, to-wit:

4614.

THE PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* JOHN MCNICHOLS
v.
THOMAS E. BARRETT, Sheriff.

Petiton for Writ of Habeas Corpus.

And now on this day comes Thomas E. Barrett, Sheriff of Cook county, to whom said writ of *habeas corpus* in this behalf was directed with said writ and return of him the said Thomas E. Barrett, Sheriff, thereon, without here and now presenting to the Court the body of John McNichols, relator, above named the personal presence of said relator, by stipulation in writing, having been waived by the parties to said writ.

And thereupon, the allegations and proofs of the respective parties in this matter being heard, and the Court being fully advised in the premises, and it appearing to the Court that the said John McNichols at the time of the issuing and serving of the said writ was lawfully

detained by the said Thomas E. Barrett, Sheriff, and ought to be remanded to his custody.

35 Ordered therefore: By the Court that the said John McNichols be and he is remanded to the custody of said Thomas E. Barrett, Sheriff, to be dealt with as law and justice demand or discharged by due process of law.

And it is further considered by the Court, that the said respondent recover of and from the said Relator costs by him in this behalf expended, and that he have execution therefore.

36 In the Supreme Court of Illinois.

PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* JOHN MCNICHOLS
vs.
THOMAS E. BARRETT, Sheriff of Cook County.

Habeas Corpus. People's Docket, No. 4614.

Petition for Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of Illinois and Assignment of Errors.

To the Honorable James H. Cartwright, Chief Justice of the Supreme Court of the State of Illinois:

Your petitioner respectfully represents, that the above entitled action is a *habeas corpus* proceeding which your petitioner instituted by presenting to the December Term A. D. 1905 of the Supreme Court of the State of Illinois, his petition for a writ of *habeas corpus* against Thomas E. Barrett, Sheriff of Cook County, Illinois, who then held him by virtue of a certain extradition warrant issued by the Governor of the State of Illinois upon a requisition from the Governor of the State of Wisconsin demanding the surrender of your petitioner as a fugitive from justice.

Your petitioner further shows that in said petition for a writ of *habeas corpus* your petitioner set forth by copy the said extradition warrant issued by the Governor of Illinois, and as reasons why said extradition warrant was void upon its face your petitioner in his said petition assigned the following reasons:

First. That it was not addressed to any particular officer or person to serve.

37 *Second.* That it did not show upon its face that the Governor of Illinois was furnished with a copy of an indictment found or affidavit made before a magistrate charging your petitioner with a crime, as provided in Section 5278 of the Revised Statutes of the United States.

Third. That it did not show that the Governor of Illinois was presented or furnished with legitimate or competent evidence, that as such time your petitioner was a fugitive from justice.

Your petitioner further shows that he attached to his said petition for a writ of *habeas corpus,* as a part thereof, a copy of the

said requisition of the Governor of Wisconsin, including the papers accompanying the same, said copy being certified to by the Secretary of the State of Illinois, under the great seal of the State of Illinois, to be a true copy of said requisition then on file in the office of the Secretary of State of the State of Illinois.

Your petitioner further shows that the said requisition, as therein set out by copy, consisted of the requisition signed by the Governor of Wisconsin, with the said papers thereto attached by the said Governor of Wisconsin as a part thereof; said papers being in substance as follows:

First. An application of Robert Verne Baker, District Attorney of Kenosha County, Wisconsin, to the Governor of Wisconsin for said requisition, in which, with other matters, the said Robert Verne Baker stated, but not under oath, that your petitioner was a fugitive from justice.

Second. A copy of a purported complaint, in words and figures following:

"STATE OF WISCONSIN, *County of Kenosha, ss:*

"Fred W. Reinold, being first duly sworn and examined on oath "by and before Benj. O. Sturges, a Justice of the Peace in and "for said County, alleges that one John McNichols did, on 37½ "the 30th day of September, A. D. 1905, at the city of Ke- "nosha, in said County, Two Hundred (200) Dollars, "lawful money of the United States, of the properties and monies "of Thomas Hansen, then and there being found, from the person "and against the will of the said Thomas Hansen, feloniously steal, "take and carry away, contrary to the form of the statute in such "case made and provided and against the peace and dignity of the "State of Wisconsin, and prays that the said John McNichols may be "arrested and dealt with according to law.

"FRED W. REINOLD.

"Subscribed and sworn to this 2nd day of October, A. D. 1905.

"BENJ. O. STURGES,
"*Justice of the Peace.*"

Third. A certificate in words and figures following:

"STATE OF WISCONSIN, *Kenosha County, ss:*

"I, Frank Waldo, Clerk of the Circuit Court of Kenosha County, "in the State aforesaid, do hereby certify, That Benj. O. Sturges, "whose name is subscribed to the certificate of acknowledgment or "proof of the annexed instrument and thereon written, was, at the "time of taking such acknowledgment or proof, an acting Justice of "the Peace, in and for said county, duly elected and sworn and au- "thorized to take the same; that I am familiar with the handwriting "of said justice, that his signature thereto is genuine; that full faith "and credit are due and of right should be given to all his official "acts as such, and that the same is executed and acknowledged in "conformity with the laws of this State.

"In testimony whereof, I have hereunto set my hand and affixed
"the seal of said Court, this 29 day of November, A. D. 1905.
[SEAL.] "FRANK WALDO, *Clerk.*"

38 *Fourth.* A copy of a warrant for the arrest of your petitioner, signed by Benjamin O. Sturges, Justice of the Peace, and certified to by the same Benjamin O. Sturges.

Your petitioner further shows that, except as above set forth, there was no evidence produced before the Governor of the State of Illinois to show that your petitioner was in the State of Wisconsin at the time of the alleged crime and subsequently fled therefrom.

Your petitioner further states that in his said petition for a writ of *habeas corpus* he alleged that he was not in the State of Wisconsin at the time of the alleged crime, which petition was duly verified; and your petitioner represents that he attached to his said petition for a writ of *habeas corpus*, as exhibits thereto, the affidavits of five persons, in each of which affidavits the affiant thereto, on his oath, stated that your petitioner at the time of said alleged crime was actually in the State of Illinois.

Your petitioner further represents that in said petition for a writ of *habeas corpus* he averred that under the statutes of the State of Wisconsin warrants for the arrest of offenders are not based upon affidavits charging crime; but upon oral testimony heard by the magistrate issuing the said warrants; and that, therefore, the laws of Wisconsin in that regard do not comply with Section 5278 of the Revised Statutes of the United States in relation to interstate extradition.

Your petitioner further represents that upon the presentation of his said petition for a writ of *habeas corpus* to the Supreme Court of Illinois at the December Term A. D. 1905, the said Court ordered that a writ of *habeas corpus* issue, as prayed, to be returnable forthwith; and said writ being issued as aforesaid the said Thomas E. Barrett, Sheriff of Cook County, did thereafter at said Term of Court, make his return to said writ of *habeas corpus* and did therein state that he did then and there hold your petitioner in his custody, and that his sole cause of such detention of your petitioner was the said extradition warrant, which warrant he set out by copy at-
39 tached to his said return; which return your petitioner traversed; and issue being fully joined said case came on for hearing at said Term of Court, at which time there was introduced in evidence on the part of your petitioner his said petition with all of the said exhibits thereto attached, and also Section 4776 of the Revised Statutes of Wisconsin, which reads as follows:

"Upon complaint made to any such magistrate that a criminal
"offense has been committed, he shall examine, on oath, the com-
"plainant and any witness produced by him, and shall reduce the
"complaint to writing and shall cause the same to be subscribed by
"the complainant; and if it shall appear that any such offense has
"been committed the magistrate shall issue a warrant reciting the
"substance of the accusation, and requiring the officer to whom it
"shall be directed forthwith to take the person accused and bring

"him before the said magistrate, or before some other magistrate of "the county, to be dealt with according to law; and in the same "warrant may require the officer to summon such witnesses as shall "be therein named to appear and give evidence on the examination."

And your petitioner further represents that on said hearing no evidence was given on the part of the respondent, Thomas E. Barrett, Sheriff of Cook County, to show that your petitioner was a fugitive from justice, further than the documents above referred to, to-wit, the said requisition and the said extradition warrant.

And your petitioner further represents that upon such matter being fully submitted as aforesaid to the said Supreme Court of Illinois, the said Supreme Court of Illinois at said December Term, A. D. 1905, ordered that the prayer of your petitioner for release be denied and that your petitioner be remanded to the custody of the said Thomas E. Barrett, Sheriff of Cook County, Illinois.

40 Your petitioner further represents and shows that the Supreme Court of the State of Illinois is the highest Court of either law or equity in the State of Illinois in which a decision in said action can be had and in which Court final judgment was rendered against your petitioner, John McNichols, as hereinbefore set forth; and your petitioner represents that in said action there are involved certain federal questions arising under the constitution and statutes of the United States and on which matters the Supreme Court of the United States may take appellate cognizance; and that your petitioner is about to be carried from the State of Illinois to the State of Wisconsin by virtue of an extradition warrant issued by the Governor of the State of Illinois without a proper compliance with or showing under the constitution and laws of the United States in regard to interstate extradition; and that such attempted extradition of your petitioner is in violation, both in law and in fact, of the constitution and laws of the United States, as above set forth.

And your petitioner here presents also his assignment of errors setting forth the reasons why he desires a reversal of the said judgment.

Wherefore, your petitioner, John McNichols, prays for the allowance of a writ of error from the Supreme Court of the United States to the Supreme Court of the State of Illinois and for a stay of proceedings to be ordered by the Honorable Chief Justice of the Supreme Court of Illinois, and for bail, until the record in said action may be properly removed to the Supreme Court of the United States and docketed therein and until the errors contained in the aforesaid record may be corrected.

JOHN A. GEETING AND
ROBERT E. CANTWELL,
Attorneys and Solicitors for John McNichols.

41 Writ of Error allowed upon the execution of a bond by John McNichols, the plaintiff in error with security to be approved by me in the sum of three hundred dollars; said bond when approved, to act as a supersedeas.

Dated December 30th, A. D. 1905.

JAMES H. CARTWRIGHT,
Chief Justice of the Supreme Court of Illinois.

42 Know all men by these presents, that we, John McNichols, as principal and Louis Seybold, as surety, are held and firmly bound unto Thomas E. Barrett, Sheriff of Cook County, Illinois, in the full and just sum of Three Hundred ($300.00) Dollars, to be paid to the said Thomas E. Barrett, Sheriff of Cook County, Illinois, or his certain attorney, executors, administrators, assigns, or successor in office; to the payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, jointly and severally by these presents

Sealed with our seals and dated this 2nd day of January in the year of our Lord one thousand nine hundred and six.

Whereas, lately at the December Term of the Supreme Court of the State of Illinois in a suit pending in said Court, being a *habeas corpus* proceeding, between the People of the State of Illinois, on the relation of said John McNichols, against the said Thomas E. Barrett, Sheriff of Cook County, Illinois, a final judgment was rendered against the said John McNichols by which he was denied his prayer for release under his petition for a writ of *habeas corpus,* and judgment rendered against him therein for costs of such proceeding, and he, the said John McNichols, having obtained the allowance of a writ of error, and filed a copy thereof in the Clerk's Office of said Court, to reverse the said judgment in the aforesaid suit, and a citation directed to the said Thomas E. Barrett, Sheriff of Cook County, Illinois, citing and admonishing him to be and appear at the Supreme Court of the United States, at the City of Washington, within thirty days from the date thereof.

Now, the condition of the above obligation is such, that if the said John McNichols shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make his said plea good, then the above obligation to be void; otherwise to remain in full force and virtue

JOHN McNICHOLS. [SEAL.]
LOUIS SEYBOLD. [SEAL.]

Sealed and delivered in presence of
JOHN F. GEETING.

Approved, January 3rd, 1906.
JAMES H CARTWRIGHT,
Chief Justice of the Supreme Court of the State of Illinois.

Filed Jan. 5, 1906.
C. MAMER,
Clerk of Supreme Court.

43 STATE OF ILLINOIS, *County of Cook, ss:*

Louis Seybold, being duly sworn on his oath says: That he resides at 3118 Indiana Avenue, Chicago, Illinois; that he is the same Louis Seybold who signed the annexed supersedeas bond as surety; that he is the absolute owner in fee simple, in his own name of record, of The North half of the West half of Block Twelve (12) in Morton's

Subdivision of the East half of the Southeast quarter of Section Thirty five (35), Town. Thirty-six (36) North, Range Fourteen (14), East of the Third Principal Meridian, situated in the City of Chicago, County of Cook, and State of Illinois; that said real estate is not a homestead and is of the value of Twenty-four Hundred (2400.00) Dollars, and that he is reasonably worth, in real and personal property, over and above all of his debts, the sum of Five Thousand ($5000.00) Dollars, and has no outstanding judgments against him; and this affiant further says that the statements made in this affidavit are so made for the purpose of proof as to his qualifications as a surety to said bond; and affiant further says that said real property above described is free of any and all encumbrances of any nature whatsoever.

LOUIS SEYBOLD.

Subscribed and sworn to by Louis Seybold before me this 2nd day of January, A. D 1906.

HENRY S. GOLDSMITH,
Notary Public.

[SEAL.]

Filed Jan. 5, 1906.
C. MAMER,
Clerk of Supreme Court.

44 In the Supreme Court of Illinois.

PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* JOHN MCNICHOLS
vs.
THOMAS E. BARRETT, Sheriff of Cook County.

Habeas Corpus. People's Docket, No. 4614.

Assignment of Errors.

And now comes John McNichols, the relator, by John F. Geeting and Robert E. Cantwell, his attorneys, and says that in the record and proceedings in the above entitled cause there is manifest error in that:

First. That the Court erred in dismissing relator's petition for a writ of *habeas corpus.*

Second: That the Court erred in holding, that the requisition of the Governor of Wisconsin upon the Governor of Illinois, for the extradition of the relator was a sufficient basis for such extradition warrant on which the relator was arrested; and in holding that in such requisition, it affirmatively appeared that the relator was legally charged with crime by affidavit before a magistrate in the State of Wisconsin, and that the relator fled from the State of Wisconsin; and, that the papers attached to such requisition were properly authenticated.

Third. That the Court erred in holding that the extradition warrant, upon which the relator was arrested and held, by the Sheriff

of Cook County, was properly directed; and that it showed on its face sufficient cause for the arrest of the relator; and for his extradition to the State of Wisconsin.

Fourth. That the Court erred in declining to accept and consider evidence to show that the relator, at the time of the supposed crime for which his extradition was sought, was not in the State
45 of Wisconsin and did not flee therefrom to the State of Illinois.

Fifth. That the Court erred in not sustaining relator's prayer for discharge, upon the face of his petition and the respondent's return thereto.

Sixth. That the Court erred in holding that the statutes of the State of Wisconsin in relation to the prosecution of offenders, otherwise than by indictment, were not inconsistent with the extradition laws of the United States.

JOHN F. GEETING &
ROBERT E. CANTWELL,
Attorneys for John McNichols.

Filed Jan. 5, 1906.
C. MAMER,
Clerk of Supreme Court.

Endorsed on cover: File No. 20,072. Illinois supreme court. Term No. 193. The People of the State of Illinois *ex rel.* John McNichols, plaintiff in error, *vs.* James Pease, sheriff of Cook county, Illinois. Filed January 30th, 1906. File No. 20,072.

Office Supreme Court U. S.
FILED
APR 9 1906
JAMES H. McKENNEY,
Clerk.

Term No. [redacted]19.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1905.

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. JOHN McNICHOLS,
Plaintiff in Error,
vs.
THOMAS E. BARRETT, Sheriff of Cook County, Illinois,
Defendant in Error.

Writ of Error to Supreme Court of Illinois.

Motion of John McNichols, Plaintiff in Error, Suggesting the Death of Thomas E. Barrett, Defendant in Error, and Praying the Substitution of James Pease, Sheriff of Cook County, Illinois.

Motion of Plaintiff in Error to be Admitted to Bail.

Suggestions upon the Motions.

S. S. GREGORY,
ATTORNEY FOR PLAINTIFF IN ERROR.

BARNARD & MILLER PRINT, CHICAGO.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1905.

Term No. 570.

PEOPLE OF THE STATE OF ILLINOIS, ex rel. JOHN McNICHOLS, *Plaintiff in Error,* *vs.* THOMAS E. BARRETT, Sheriff of Cook County, Illinois, *Defendant in Error.*	Writ of Error to Supreme Court of Illinois.

Motion of John McNichols, Plaintiff in Error, Suggesting the Death of Thomas E. Barrett, Defendant in Error, and Praying the Substitution of James Pease, Sheriff of Cook County, Illinois.

Now comes John McNichols, plaintiff in error, by S. S. Gregory, his attorney, and respectfully shows to this Honorable court that upon the petition of the said John McNichols, presented to the Supreme Court of the State of Illinois, a writ of habeas corpus at the December Term, A. D. 1905, thereof, was issued directing Thomas E. Barrett, then Sheriff of Cook County, Illinois, to produce before the said court the body of the said John McNichols, and that due return being made by the said Thomas E. Barrett as such Sheriff to the said writ of habeas corpus, and a hearing of said matter being had at the

December Term, A. D. 1905, of the Supreme Court of the State of Illinois, by the judgment of said court at said term, the said John McNichols was remanded into the custody of said Thomas E. Barrett, as Sheriff of Cook County, Illinois; and that subsequently upon the petition of the said John McNichols, a writ of error and supersedeas in said matter was granted by the Honorable James H. Cartwright, Chief Justice of the Supreme Court of the State of Illinois, returnable before this Honorable court; and that the said Thomas E. Barrett, who was made defendant in error in said writ of error, was cited to appear before this Honorable court and answer in relation thereto, the only interest the said Thomas E. Barrett having in said matter being that he was then the Sheriff of Cook County, Illinois, and held in his custody the said John McNichols, all of which fully appears of record in the above entitled cause.

And the said John McNichols, plaintiff in error, respectfully represents to this Honorable court that subsequent to all of such proceedings, and upon the 29th day of March, A. D. 1906, the said Thomas E. Barrett died, and that thereafter, upon the said 29th day of March, A. D. 1906, one James Pease was duly appointed Sheriff of said Cook County, Illinois, to fill the vacancy of said office caused by the death of the said Thomas E. Barrett, and that the said James Pease is now the Sheriff of said Cook County, Illinois.

And the said John McNichols, plaintiff in error, presents with this motion three certain certificates signed and certified to, under seal, by Peter B. Olson, County Clerk of Cook County, Illinois, showing the

fact that the said Thomas E. Barrett died leaving his said office vacant, and that the said James Pease was duly appointed as his successor in office.

Wherefore the said John McNichols, plaintiff in error, respectfully prays this Honorable court that an order may be entered substituting the said James Pease, Sheriff of Cook County, Illinois, as the defendant in error in the above entitled cause.

S. S. Gregory,
Attorney for Plaintiff in Error.

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1905.

Term No. 570.

PEOPLE OF THE STATE OF ILLINOIS, ex rel. JOHN McNICHOLS, *Plaintiff in Error,*
vs.
THOMAS E. BARRETT, Sheriff of Cook County, Illinois, *Defendant in Error.*

Writ of Error to Supreme Court of Illinois

Motion of Plaintiff in Error to be Admitted to Bail.

Now comes John McNichols, plaintiff in error, by S. S. Gregory, his attorney, and shows to this Honorable court that in the month of December, A. D. 1905, the said John McNichols, being then in the custody of Thomas E. Barrett, Sheriff of Cook County, Illinois, by virtue of an extradition warrant issued by the Governor of the State of Illinois (upon the supposed charge of larceny in the State of Wisconsin, which offense is a bailable offense under the laws of Wisconsin), he presented to and procured from the Supreme Court of the State of Illinois a writ of habeas corpus, which writ was returnable to and heard and determined at the December Term, A. D. 1905, of the said Supreme Court of the State of Illinois; and that by the judgment then rendered

by said court, the said John McNichols was remanded into the custody of the said Thomas E. Barrett, Sheriff of Cook County, Illinois; and that thereafter he, the said John McNichols, obtained, by the order of the Honorable James H. Cartwright, Chief Justice of the Supreme Court of the State of Illinois, a writ of error by which the said matter and judgment is brought before this Honorable court for review, and that the said writ of error was made a supersedeas, but that the said John McNichols has not been admitted to bail, all of which matters fully appear by the record in the above entitled cause, now before this Honorable court.

And the said John McNichols states that the reason why he was not admitted to bail by the Chief Justice of the Supreme Court of the State of Illinois pending this writ of error was that the said Chief Justice stated that he doubted his authority to act in the case any further than to grant the writ of error and supersedeas.

And the said John McNichols further states that the said Thomas E. Barrett, having died upon the 29th day of March, A. D. 1906, and James Pease having been duly appointed Sheriff of said Cook County, as successor in office to the said Thomas E. Barrett, deceased, the said John McNichols is now held in the custody of the said James Pease, Sheriff of Cook County, Illinois; but for no other reason than upon the matters above set forth.

And the said John McNichols further shows that he is now able to give good and sufficient bail for his appearance before this Honorable court; that he

will abide the order and decision of this Honorable court.

Wherefore John McNichols, the plaintiff in error, prays that this Honorable court enter an order whereby he may be admitted to bail, in a reasonable amount, upon his furnishing sufficient security therefor.

S. S. GREGORY,
Attorney for Plaintiff in Error.

COPY OF NOTICE.

UNITED STATES OF AMERICA, ss.

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA.

OCTOBER TERM, A. D. 1905.

The People of the State of Illinois
ex rel. John McNichols,
Plaintiff in Error,
vs.
Thomas E. Barrett,
Defendant in Error.

WRIT OF ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

TERM NO. 570.

NOTICE.

To James Pease, Sheriff of Cook County, Illinois:

Notice is hereby given that on Monday, the 9th day of April, A. D. 1906, as soon as counsel may be heard, at or after the opening of the morning session of the Supreme Court of the United States of America, at its court room in the City of Washington, the plaintiff in error in the above entitled cause will suggest the death of Thomas E. Barrett, the defendant in error, and move that you be substituted as the defendant in error, and will also then and there move that the said John McNichols, plaintiff in error, be admitted to bail pending the above entitled cause.

S. S. GREGORY,
Attorney for John McNichols,
Plaintiff in Error.

CHICAGO, April 2, 1906.

Received a copy of the above notice this 2nd day of April, 1906; also copies of each of the above mentioned motions.

JAMES PEASE,
Sheriff Cook County, Illinois.

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1905.

Term No. 570.

PEOPLE OF THE STATE OF ILLINOIS, ex rel. JOHN McNICHOLS, *Plaintiff in Error,*
vs.
THOMAS E. BARRETT, Sheriff of Cook County, Illinois, *Defendant in Error.*

Writ of Error to Supreme Court of Illinois

Suggestions upon the Following Motions.

1. MOTION SUGGESTING THE DEATH OF THOMAS E. BARRETT AND MOVING THAT JAMES PEASE BE SUBSTITUTED AS DEFENDANT IN ERROR.

2. MOTION TO ADMIT PLAINTIFF IN ERROR TO BAIL.

MAY IT PLEASE THE COURT:

While we had under consideration the matter of presenting a motion to admit the plaintiff in error to bail, the defendant in error, Thomas E. Barrett, late Sheriff of Cook County, Illinois, died upon March 29, 1906; accordingly these two motions are presented simultaneously, and the suggestions in support of them are presented herewith.

SUGGESTIONS AS TO THE DEATH OF THOMAS E. BARRETT AND APPOINTMENT OF HIS SUCCESSOR IN OFFICE.

First. A certificate of Peter B. Olson, County

Clerk of Cook County, Illinois, under the official seal of Cook County, Illinois, certifying to "a true and correct copy of original certificate of death of Thomas E. Barrett, on Thursday, March 29, A. D. 1906, all of which appears from the records and files in my office. The document certified to is that of Carl Beck, M. D., who certifies that Thomas E. Barrett, Sheriff of Cook County, died on March 29, 1906, about 10:15 A. M., at 2653 North Paulina street, Chicago, Illinois, and was buried at Calvery Cemetery.

Second. Certificate of Peter B. Olson, County Clerk of Cook County, Illinois, under the official seal of said county, certifying to "a true and correct copy of the official record of the proceedings of the Board of County Commissioners of Cook County, Illinois, of Thursday, March 29, A. D. 1906, all of which appears from the records and files in my office."

The official record shows:

1st. The order by the President of the Board of County Commissioners of Cook County, directing the clerk to call the board together for the purpose of filling the vacancy existing in the office of the Sheriff of Cook County, by reason of the death of Thomas E. Barrett.

2nd. The notice issued by Peter B. Olson calling together the members of the board.

3rd. The roll call showing the members present.

4th. The resolutions relative to the death of Sheriff Thomas E. Barrett.

5th. A resolution by which James Pease was ap-

pointed to fill the vacancy caused by the death of said Thomas E. Barrett.

6th. A unanimous vote of the members present sustaining the resolution.

A document is also placed upon file with the Clerk of the Supreme Court, signed by James Pease, by which he suggests the death of Thomas E. Barrett, and asks to be substituted as defendant in error, the document, exclusive of caption and title, being as follows:

> "*To the Honorable Supreme Court of the United States:*
>
> "Now comes James Pease, Sheriff of Cook County, in the State of Illinois, and respectfully represents to the court: That Thomas E. Barrett, the defendant in error in the above entitled cause, while still Sheriff of Cook County, Illinois, died on the 29th day of March, A. D. 1906; and that he, the said James Pease, was according to law duly appointed as the successor to the said Thomas E. Barrett as Sheriff of said Cook County, and has duly qualified as such Sheriff, and is now the Sheriff of Cook County, Illinois; and the said James Pease now respectfully prays this Honorable court that he may be substituted in his official capacity as Sheriff of Cook County, Illinois, as the defendant in error in the above entitled cause.
>
> "JAMES PEASE, *Sheriff.*"

SUGGESTIONS UPON THE MOTION TO ADMIT THE PLAINTIFF IN ERROR TO BAIL.

Introductory to this motion, it may be well to state a few facts out of the record, as follows:

The subject-matter of this case was originally before the Honorable John Gibbons, one of the Judges

of the Circuit Court of Cook County, Illinois. McNichols was then admitted to bail in the sum of one thousand dollars ($1,000). Upon the hearing of that case the Judge suggested that the questions involved were of so grave a character that they ought to be passed upon by the Supreme Court of the State; and that as there was no appeal from the Circuit Court to the Supreme Court of Illinois, in habeas corpus cases, he remanded the relator with a stay order, to enable him to apply to the Supreme Court of the State.

A writ of habeas corpus was then issued by the Supreme Court of Illinois, and was very promptly heard. A majority of the court held against the contentions of the relator, and he was again remanded. No written opinion was given by the court. The present writ of error was then granted by the Hon. James H. Cartwright, Chief Justice of the Supreme Court of Illinois, who doubted his power to act further than the granting of the writ of error and the supersedeas and the approval of the supersedeas bond; but suggested that he might act upon the advice of a Justice of this court. This suggestion was acted upon by Mr. Geeting, counsel for McNichols, which resulted in the following two letters, one from Mr. Justice Day, and the other from Chief Justice Cartwright:

"WASHINGTON, D. C., January 15, 1906.

"*Mr. J. F. Geeting,*

"1044 Unity Bldg., Chicago.

"DEAR SIR:

"I have your favor of the 11th inst., referring to the matter of admitting to bail of John McNichols, in habeas corpus on appeal to this court

from the Supreme Court of Illinois. While the question has not been presented to me in a judicial way, personally it seems to me that the Chief Justice who allowed the writ and approved the supersedeas bond would have power to admit the prisoner to bail. If the Chief Justice has doubts upon this subject and does not wish to make the order, I would suggest that you make application to this court to admit to bail. As the court is now in session, this matter can be promptly heard.

"Very truly yours,

"WILLIAM R. DAY."

"OREGON, Illinois, January 23, 1906.

"*John F. Geeting, Esq.*,

"Chicago, Illinois.

"MY DEAR SIR:

"Your letter of yesterday is received. I would be glad to accommodate you, and would not hesitate to act on the opinion of Mr. Justice Day, if I did not feel reasonably certain that our court has now lost jurisdiction, and that the case is pending in the United States Court, which alone has jurisdiction. It seems to me now that after allowing the writ, approving the supersedeas bond and issuing the citation, the case is legally removed, and I cannot make any further order in it. I would be very glad to do as you suggest if I had the power, as it would save you inconvenience, but I would not like to act without jurisdiction.

"Yours truly,

"JAMES H. CARTWRIGHT."

We submit that as the offense for which the effort is made to extradite the plaintiff in error is bailable in the State of Wisconsin, that he should be admitted to bail, and that the amount and terms of bail should largely depend upon the nature of the proceeding as it appears in the record.

Among the points made by the plaintiff in error upon the record are the following:

First. That there was no evidence, under oath, laid before the Governor of the State of Illinois that the plaintiff in error was a fugitive from justice, there being nothing under oath to show that he was in the State of Wisconsin at the time of the alleged crime, and subsequently fled therefrom; while, in his petition, under oath, he negatives that fact and exhibits five affidavits by which it positively appears that he was within the State of Illinois at the time of the alleged offense.

Ex Parte Reggel, 114 U. S., 642 (651).
Roberts v. *Reily*, 116 U. S., 80.
Hyatt v. *People*, 188 U. S., 691.
In Re Todd, 12 S. D., 386.
In Re Jackson, 2 Flippen, 182.
Ex Parte Smith, 3 McLean, 121.

Second. Section 5278, U. S. R. S., limits extradition to cases of indictment found, or affidavit made before a magistrate, "charging the person demanded with having committed treason, felony, or other crime." In this case there was no indictment found; but the demand is made on an informal affidavit made before a magistrate. Under the statutes of Wisconsin no affidavit is required before the magistrate; but the warrant issues upon oral testimony taken (*State* v. *Davis*, 62 Wis., 308); consequently, as under the statutes of Wisconsin there is no practice by which a person can be charged by affidavit, the statutes of Wisconsin not complying with the Act of Congress, extradition is limited to cases of indictment found.

A State may legislate as to the practice within its own courts; but it can only avail itself of the privileges of interstate extradition when its laws comply with the Act of Congress.

Ex Pate Hart, 11 C. C A., 165.

Third. The affidavit, a copy of which appears in the requisition of the Governor of the State of Wisconsin, is very informal in its nature, and is made by the chief of the police, who does not appear to have any personal knowledge of the matters stated in it; and we, therefore, claim it is an insufficient basis for a warrant.

An affidavit made upon information and belief is not a sufficient basis for a warrant.

Rice v. *Ames*, 180 U. S., 371.
Johnston v. *U. S.*, 30 C. C. A., 612.
U. S. v. *Collins*, 79 Fed., 65.
Lippman v. *People*, 175 Ill., 101.
State v. *McGahey*, 97 N. W. Rep., 865, and other cases.

Where, from the contents of the affidavit, it would reasonably appear that the affiant does not have personal knowledge, the affidavit will be presumed to be made on information and belief, and, therefore, insufficient.

Hart v. *Grant*, 8 S. D., 248.
Finley v. *Castroverde*, 22 N. Y. Sup., 716.
Crowns v. *Vail*, 51 Hun., 204.
Wodien v. *Hunt*, 4 Iowa, 355.

Other points are made in the petition, which we believe unnecessary to present at this time.

The presenting of the motion for bail has been somewhat delayed, for the reason a doubt existed in the mind of some of the counsel as to who should be the obligee in the bond—whether it should be the People of the State of Illinois or the Sheriff of Cook County, who is the defendant in error, or the State of Wisconsin, which is the real party in interest. It was finally agreed, by the counsel on the respective sides, that to expedite matters, three bonds should be drawn in the sum of one thousand dollars ($1,000) each, to accompany this motion, which was done.

The death of the Sheriff occurring immediately after that, a fourth bond was prepared payable to the successor in office. All four of these bonds, which in matter of form and amount are declared satisfactory to the counsel for the defendant in error, are now presented with this motion, subject to the opinion of this Honorable court.

Respectfully submitted.

S. S. Gregory,
Attorney for Plaintiff in Error.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1907.

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel. JOHN McNICHOLS, *Plaintiffs in Error,*

vs.

JAMES PEASE, Sheriff of Cook County, Illinois, *Defendant in Error.*

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

Statement and Brief and Argument for Plaintiff in Error.

STATEMENT OF THE CASE.

MAY IT PLEASE THE COURT:

As appears on pages 12 and 13 of the record (Printed Record, 7), the plaintiff in error, John McNichols, was originally arrested upon a fugitive warrant issued by a justice of the peace in Chicago. He procured a writ of *habeas corpus* from the Criminal Court of Cook County (Illinois) by order of Honorable John Gibbons, one of the presiding judges. While this proceeding was pending the governor of Wisconsin made a requisition on the

governor of Illinois for the surrender of Mr. McNichols, which was granted. The *habeas corpus* proceeding was then amended, so as to present the entire extradition matter, and, while counsel for Mr. McNichols was attacking the supposed validity of the extradition proceeding, Judge Gibbons arrested the argument, saying that the questions involved were so grave that they ought to be passed upon by the Supreme Court, and, as under the practice in Illinois there could be no appeal from his decision, he would continue the case until an original petition addressed to the Supreme Court of Illinois, could be prepared. The petition was immediately prepared, and, on December 14, 1905, an order was entered that the writ of *habeas corpus* in the Criminal Court be dismissed without any adjudication as to its merits, and, that the sheriff should retain Mr. McNichols in Illinois until December 19th, so that he could present his petition to the Supreme Court. On December 15th the new petition was presented to the Supreme Court of Illinois and by order of that court a writ of *habeas corpus* was issued. The sheriff of Cook County made his return, or answer, as it is described in the record, setting up the extradition warrant as the sole cause of detention. The case was heard on December 19th. Mr. McNichols was not present, as it had been stipulated that the sheriff need not produce him in open court. (Rec., 31; Printed Rec., 18.) The case was presented in a very informal manner, upon the sworn petition of Mr. McNichols and affidavits and documents thereto attached, together with the respondent's answer. (Rec., 34; Printed Rec., 20.) No other evidence was heard,

except the Revised Statutes of Wisconsin, from which several sections were read at the pleasure of the respective counsel. As the term was then drawing to a close, counsel on each side was limited to thirty minutes in which to call the attention of the court to matters of fact appearing in the petition, affidavits, documents, and answer, and statutes of Wisconsin, and also to briefly argue questions of law. (Rec., 33-34; Printed Rec., 20.) On part of Mr. McNichols it was contended that: 1. The extradition warrant was *prima facie* void. 2. The requisition and documents attached were insufficient to authorize the governor of Illinois to issue his executive warrant. 3. That as a matter of fact, it was shown by the sworn petition and five affidavits attached that Mr. McNichols was not a fugitive from justice. (If for a moment, we have traveled out of the record in this statement, it is to explain the short record presented; confident that counsel for the defendant in error will join in this explanation of that which otherwise might seem vague. The efforts in the court below was to bring the question fully before the court in as brief form as possible.)

On December 20th, without any written opinion, the chief justice announced the decision of the court, dismissing the writ of *habeas corpus;* from which decision the chief justice and Mr. Justice Scott dissented. Subsequently, the chief justice of the Supreme Court of Illinois granted a writ of error, by which the matter is now before this court.

NOT A FUGITIVE FROM JUSTICE.

In his petition presented to the court below, the plaintiff in error averred that he was not a fugitive from justice, and, that at the time of the alleged crime of which he was being extradited, he was not in the State of Wisconsin, but was in the territory of the State of Illinois. This phase of the case was not only supported by his own oath, but by five affidavits, attached to the petition. (Rec., 24-28; Printed Rec., 14-16.) The stating parts of the affidavit are as follows:

> "John F. Drapp, being first duly sworn, deposes and says that he resides at 662 W. Van Buren street, in the City of Chicago, county and state aforesaid; that he is personally acquainted with John McNichols, of Chicago, whose extradition proceedings are now pending, and this affiant further upon his oath says that upon the 30th day of September, A. D. 1905, the said John McNichols to this affiant's personal knowledge was in the City of Chicago at about the hour of 1 o'clock P. M., and that this affiant remained in the company of the said McNichols until after 2:15 P. M., and again met the said McNichols about three o'clock P. M. said day; this affiant further says that it would have been impossible for the said McNichols to have been in the City of Kenosha, State of Wisconsin, on the said 30th day of September, A. D. 1905.
>
> "And further affiant saith not."

> "William Oakley, being first duly sworn, deposes and says that he resides at 670 W. Van Buren street, in the City of Chicago, county and state aforesaid; that he is personally acquainted with John M. McNichols, of Chicago, whose extradition proceedings are now pend-

ing, and this affiant further upon his oath says that upon the 30th day of September, A. D. 1905, said John M. McNichols, to this affiant's personal knowledge, was in the City of Chicago, the whole of the afternoon of the said day, this affiant and the said John M. McNichols during the said afternoon being in attendance at a baseball game, in the said City of Chicago, between the Chicago and Boston teams, which said game was played at the West Side Ball Park.

"And further affiant saith not."

"Simon F. Bowen, being first duly sworn, deposes and says, that he resides at 1396 Ogden avenue, in the City of Chicago, county and state aforesaid; that he is personally acquainted with John M. McNichols, of Chicago, whose extradition proceedings are now pending, and the affiant further upon his oath says that on the 30th day of September, A. D. 1905, said John M. McNichols, to this affiant's personal knowledge, was in the City of Chicago whole of the afternoon of the said day, this affiant and the said John M. McNichols during said afternoon being in attendance at a baseball game in the said City of Chicago, between the Chicago and Boston teams, which said game was played at the West Side Ball Park.

"And further affiant saith not."

"John A. Denison, being first duly sworn, deposes and says, that he resides at 780 Jackson boulevard, in the City of Chicago, county and state aforesaid; that he is personally acquainted with John McNichols, of Chicago, whose extradition proceedings are now pending, and the affiant further upon his oath says that on the 30th day of September, A. D. 1905, said John McNichols to this affiant's personal knowledge was in the City of Chicago the whole of the afternoon of the said day, this affiant and the said

John McNichols, during said afternoon, being in attendance at a baseball game in the said City of Chicago, between the Chicago and the Boston teams, which said game was played at the West Side Ball Park.

"And further affiant saith not."

"Hugh Camobell, being first duly sworn, deposes and says, that he resides at 842 Homan avenue, in the City of Chicago, county and state aforesaid; that he is personally acquainted with John McNichols, of Chicago, whose extradition proceedings are now pending, and the affiant further upon his oath says, that on the 30th day of September, A. D. 1905, said John McNichol's, to this affiant's personal knowledge, was in the City of Chicago the whole of the afternoon of the said day, this affiant and the said John McNichols during said afternoon being in attendance at a baseball game, in the said City of Chicago, between the Chicago and Boston teams, which said game was played at the West Side Ball Park.

"And further affiant saith not."

No effort was made in the court below to rebut this testimony, but counsel contended that the issue could not be raised upon the writ of *habeas corpus*.

THE REQUISITION AND THE EXTRADITION WARRANT.

In his petition in the court below, the plaintiff in error also claimed that the requisition was insufficient and that the extradition warrant was *prima facie* void, in proof of which there was attached to the petition a certified copy of the requisition (Rec., 17-23; Printed Rec., 9-13), and a copy of extradition warrant (Rec., 15; Printed Rec., 9).

THE REQUISITION.

There is no statement *under oath* that Mr. McNichols was ever in the State of Wisconsin, or was there on the day of the alleged offense, and subsequently fled from the State of Wisconsin to the State of Illinois. All that appears upon this phase of the matter is the statement by the district attorney in his application for the requisition, and the statement in the requisition that relator has filed, *neither of these under oath.*

The papers accompanying the requisition purport to set forth a copy of the accusation made before a justice of the peace in Wisconsin, by Fred W. Reinold, who, it appears from the statement of the district attorney, is the chief of police of Kenosha, and who, by the requisition, is made the agent of the State of Wisconsin. (Rec., 19; Printed Rec., 11.) The accusation is as follows:

STATE OF WISCONSIN, }
COUNTY OF KENOSHA. } ss.

Fred W. Reinold, being first duly sworn and examined on oath by and before Benj. O. Sturges, a justice of the peace in and for said county, alleges that one John McNichols did, on the 30th day of September, A. D. 1905, at the City of Kenosha, in said county, Two Hundred (200) Dollars, lawful money of the United States, of the properties and moneys of Thomas Hansen, then and there being found, from the person and against the will of the said Thomas Hanson, feloniously steal, take and carry away, contrary to the form of the statute in

such case made and provided and against the peace and dignity of the State of Wisconsin, and prays that the said John McNichols may be arrested and dealt with according to law.

FRED W. REINOLD.

Subscribed and sworn to this 2nd day of October, A. D. 1905.

BENJ. O. STURGES,
Justice of the Peace.

This complaint is followed by a paper signed by Frank Waldo, clerk of the Circuit Court of Kenosha County, certifying that Benjamin O. Sturges, "whose name is subscribed to the *certificate of acknowledgment or proof of the annexed instrument*, and written thereon, was, at the time of taking *such acknowledgment or proof*, an acting justice of the peace," * * * "and that the same is executed and *acknowledged* in conformity with the laws of this state." There is no reference in this certificate *to the supposed affidavit or complaint* preceding it.

In the court below it was not only claimed that this affidavit was not properly authenticated, but that the document itself is not an affidavit before a magistrate charging a crime, as is required in extradition proceedings by Section 5278, U. S. R. S. On this point, we here call the attention of the court to the practice in Wisconsin: Where a justice of the peace in Wisconsin sits as an examining magistrate, to hold in bail or commit for trial in the Circuit Court, the prisoner is not *charged by affidavit*, but the warrant issued upon oral testimony. (*Davies*

v. *State*, 60 Wisconsin, 305; Section 4776 of Wisconsin R. S.)

We also contended in the court below that the complaint was not a clear statement of facts, made from personal knowledge, as is required to constitute an affidavit.

Extradition Warrant.

The extradition warrant issued by the Governor of Illinois was not addressed to any particular officer to serve, as required by Section 1, Chap. 60 Ill. R. S.; did not recite that the governor was furnished with a copy of the affidavit made before a *magistrate*, charging a crime, nor did it show that Mr. McNichols was in, and fled from, the State of Wisconsin; nor did it show what evidence he received as to whether or not the accused was a fugitive from justice. (Rec., 15; Printed Rec., 8.)

SPECIFICATION OF THE ERRORS RELIED UPON.

The assignment of errors made of records are as follows:

First. That the court erred in dismissing relator's petition for a writ of *habeas corpus.*

Second. That the court erred in holding that the requisition of the governor of Wisconsin upon the governor of Illinois for the extradition of the relator, was a sufficient basis for such extradition warrant on which the relator was arrested; and in holding that in such requisition, it affirmatively appeared that the relator was legally charged with crime by affidavit before a magistrate in the State of Wisconsin, and that the relator fled from the State of Wisconsin; and, that the papers attached to such requisition were properly authenticated.

Third. That the court erred in holding that the extradition warrant, upon which the relator was arrested and held by the sheriff of Cook County, was properly directed; and that it showed on its face sufficient cause for the arrest of the relator, and for his extradition to the State of Wisconsin.

Fourth. That the court erred in declining to accept and consider evidence to show that the relator, at the time of the supposed crime for which his extradition was sought, was not in the State of Wisconsin and did not flee therefrom to the State of Illinois.

Fifth. That the court erred in not sustaining re-

lator's prayer for discharge, upon the face of his petition and the respondent's return thereto.

Sixth. That the court erred in holding that the statutes of the State of Wisconsin, in relation to the prosecution of offenders, otherwise than by indictment, were not inconsistent with the extradition laws of the United States.

As the court below did not give a written opinion, nor make specific findings of record, the first and fifth assignments of error cover all the others. To make our position clear, we claim:

First. That the governor's extradition warrant is void, for the reasons that: It was not addressed to any particular officer as required by the Illinois statutes, but was directed generally "to *any* sheriff, coroner or constable in any county of the state"; that it does not recite that the governor was furnished with a *copy of affidavit made before a magistrate charging* the relator with crime, as required by Section 5278, U. S. R. S., but simply refers to the copy of and complaint and affidavit made *by* and before a *properly authorized officer;* that it does not show that Mr. McNichols was in Wisconsin at the time of the alleged crime and fled to Illinois; nor does it show what evidence was received as to whether he was a fugitive from justice or not.

Second. That it does not appear from the requisition papers that the governor of Illinois received any competent evidence to show that Mr. McNichols committed a crime in Wisconsin and fled to Illinois.

Third. That the complaint made by the chief of

police of Kenosha is insufficient, in that it does not possess the quality or character of an affidavit, as required by the Act of Congress; is not a concise statement of facts; is made by one who does not appear to have had any personal knowledge of the supposed offense, and who does not give any reason why the complaint was not made by Thomas Hanson.

Fourth. That the complaint is but a voluntary affidavit, in that, according to the statutes and practice of Wisconsin, a warrant does not issue upon a written complaint under oath, but upon oral testimony; hence, the defendant is not *legally charged* by affidavit, as required by Act of Congress.

Fifth. That the documents are not properly certified to.

Sixth. That, in fact, Mr. McNichols is not a fugitive from justice, as appears by his sworn petition and the *undisputed* affidavits attached to it.

BRIEF.

PROVISION OF THE UNITED STATES CONSTITUTION RELATING TO EXTRADITION.

The United States Constitution, Article IV, Section 2, Clause 2, provides as follows:

> "A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up to be removed to the state having jurisdiction of the crime."

The above provision of the constitution was not self-acting, but required legislation by Congress to put it into operation; which was done by the Act of February 12, 1793, re-enacted as Section 5278 of the United States Revised Statutes.

Hyatt v. *People ex rel. Corkran*, 188 U. S., 691; 12 Am. Cr. Rep., 311 (316).

Com. v. *Dennison*, 24 How., 66 (104).

STATUTORY REQUIREMENTS.

Section 5278 of the Revised Statutes of the United States reads as follows:

> "SEC. 5278. Whenever the executive authority of any state or territory demands any person *as a fugitive from justice*, of the executive authority of any state or territory *to which such person has fled*, and produces a copy of an indictment found or an *affidavit* made before a magistrate of any state or territory, charging

the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the state or territory from whence the person so charged *has fled*, it shall be the duty of the executive authority of the state or territory to which such person *had fled*, to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within six months from the time of the arrest, the prisoner may be discharged. All costs or expenses incurred in the apprehending, securing and transmitting such fugitive to the state or territory making such demand shall be paid by such state or territory."

FUGITIVE FROM JUSTICE.

The term "fugitive from justice," as used in Section 5278, U. S. R. S., does not apply to one who constructively commits a crime in another state, but only to such a person as was physically present within a state at the time of the commission of a crime and subsequently fled therefrom.

Hyatt v. *People ex rel. Corkran*, 188 U. S., 691; 12 Am. Cr. Rep., 311.

In re Tod, 12 S. D., 386; 12 Am. Cr. Rep., 303.

Ex parte Smith, 3 McLean, 121.

The fact that the person demanded is a fugitive from justice is a *jurisdictional prerequisite* to an extradition warrant. The governor upon whom the demand is made has no authority to issue his extra-

dition warrant, unless competent proof has been made to him that the person demanded was within the jurisdiction of the demanding state at the time of the commission of the crime in question and subsequently fled therefrom.

Ex parte Reggell, 114 U. S., 642 (651).
Roberts v. *Reilly*, 116 U. S., 80.
Hyatt v. *People, supra.*
In re Jackson, 2 Flippin (U. S.), 182.

"The evidence that the person has fled from justice must not only be satisfactory to the governor, but must be legally sufficient before the executive authority can be exercised. He cannot act upon rumor, nor upon the mere representation of a person, *nor upon the demanding governor's certificate.* It should be sworn evidence, such as will authorize a warrant of arrest in any other case."

In re Jackson, supra.

"The removal of a person from one state, as a fugitive from justice, is a matter of the highest importance and cannot be made upon less evidence of the party's guilt and flight than would authorize a warrant of arrest in an ordinary case." "The warrant must bear upon its face the evidence that it was duly issued."

In re Doo Woon, 18 Fed., 898.

In determining whether an accused person is a fugitive from justice, the date of the alleged crime as charged in the accusation must be accepted as correct, unless there is proof to the contrary.

Hyatt v. *People, supra.*

CHARGED BY AFFIDAVIT.

A warrant for the extradition of a person cannot be lawfully issued, unless the accused has been indicted in a court of competent jurisdiction in the demanding state, or *charged by affidavit before a magistrate* in such state.

Section 5278, U. S. R. S., *supra*.

Each state has a right to create its own code of criminal procedure, but unless the practice of the demanding state comes within the requirements of Section 5278, U. S. R. S., that state is not entitled to the benefit of extradition proceedings. Thus, the filing of an information, although consistent with the practice of the demanding state, is not a basis for extradition proceedings; for the accused is not indicted, neither is he charged by affidavit before a magistrate.

Ex parte Hart, 11 C. C. A., 165; 63 Fed., 249; 28 L. R. A., 801.

In the State of Wisconsin, where a justice of the peace sets as an examining magistrate, to hold to bail or to commit for trial, an affidavit is not necessary, but the warrant issues upon oral testimony taken by the justice.

Section 4776, Wis. R. S.

State v. *Davies*, 62 Wis., 305.

The statute of Wisconsin does not require an affidavit; accordingly Mr. McNichols was not charged by affidavit according to law. The affidavit, if such it may be termed, would be a voluntary affidavit, and would not subject the affiant to the penalties of perjury.

REQUISITES OF AN AFFIDAVIT.

An affidavit is a written statement of material facts made with that degree of positiveness and certainty that if falsely made, the affiant would be guilty of perjury.

Bidings v. *Noble*, 75 Wis., 325.
Myers v. *People*, 67 Ill., 503.
Neal v. *Gordon* 60 Ga., 112.
People v. *Becker*, 20 N. Y., 354.
People v. *Heffron*, 53 Mich., 527.
Ex parte Dimming, 74 Cal., 164.
Ex parte Lane, 6 Fed., 34.

People ex rel. Smith v. *Brown*, 6 Chi. Legal News, 392 (opinion of Judge McAllister; for a synopsis of it, see 11 Am. Crim. Rep., 354).

STATEMENTS ON INFORMATION AND BELIEF.

A written statement under oath made simply upon information and belief does not possess the qualities of an affidavit.

Rice v. *Ames* (extradition case), 180 U. S., 371; 12 Am. Crim. Rep., 356.
Lippman v. *People*, 175 Ill., 101 (110); 11 Am. Crim. Rep., 356 (364).
Johnston v. *U. S.*, 30 C. C. A., 612; 87 Fed., 187; 11 Am. Crim. Rep., 349.
Ex parte Hart (extradition case), *supra*.
Ex parte Lane (extradition case), *supra*.
Ex parte Smith (extradition case), *supra*.
Ex parte Dimming, *supra*.
U. S. v. *Collins*, 79 Fed., 65.
U. S. v. *Sapinkow*, 90 Fed., 654.

Ex parte Morgan (extradition case), 20 Fed., 298.

State v. *Gleason*, 32 Kan., 345; 5 Am. Crim. Rep., 172.

State v. *McGahey*, N. D.; 97 N. W. Rep., 865.

The *Shustek case*, 11 Am. Crim. Rep., 372.

AFFIDAVITS POSITIVE IN FORM HELD TO BE INSUFFICIENT.

A written statement under oath made in the positive form, if made under circumstances, or as to matters which indicate that it was made upon information and belief, will be so considered.

M. & T. Bank v. *Loucheims*, 8 N. Y. S., 520.

Tim v. *Smith*, 93 New York, 91.

Hart v. *Grant*, 8 S. D., 248; 66 N. W. Rep., 622.

Finely et al. v. *De Castroverde*, 22 N. Y. S., 716.

Applying the above doctrine, it has been held that an affidavit of an attorney is presumed *not* to be on personal knowledge, but on information and belief; and that the source of the "information" and the grounds of belief should be stated in the affidavit.

Crowns v. *Vail*, 51 Hun., 204 (206).

It is not sufficient that such attorney states that he is well acquainted with the facts; he must show how he is so acquainted.

Carter v. *Rathbone*, 1 Hill, 204 (206).

Cribben v. *Schillinger*, 30 Hun, 248 (249).

Cowles v. *Garding*, 79 N. C., 577 (579).

Wodien v. *Hunt*, 4 Iowa, 355.

"Such affiant does not necessarily have knowledge of, and cannot be presumed to know, the several facts attempted to be established by his affidavit."

Bank of Pittsburg v. *Murphy*, 18 N. Y. S., 575.

Van Egan v. *Herold*, 19 N. Y. S., 456.

Talbert v. *Strom*, 21 N. Y. S., 719.

See, also:

Griel v. *Backius*, 114 Pa. St., 187 (190).

Davis v. *Mouat Lumber Co.*, 2 Colo. App., 381 (387).

Shattuck v. *Myers*, 13 Ind., 46 (48-49).

People v. *Spaulding*, 2 Paige, 336.

This line of authorities is presented to bear upon the fact that Fred W. Reinold, chief of police of Kenosha, who makes the complaint, is not presumed to have knowledge of the matters mentioned in the complaint. It is not to be presumed that the alleged larceny was committed in the presence of the chief of police and the culprit allowed to escape. We claim that the context of the affidavit indicates that it must have been made upon information and belief.

VOLUNTARY AFFIDAVITS.

Perjury cannot be assigned upon an affidavit not required by law.

Silver v. *State*, 17 Ohio, 365.

Beecher v. *Anderson*, 45 Mich., 543.

A criminal complaint which does not set out facts sufficient to constitute a crime is void, and does not confer jurisdiction upon the magistrate taking it.

Moore v. *Watts*, Breeze 18, B. 15., 42.

Housh v. *People*, 75 Ill., 487.

Sarah Way's case, 41 Mich., 299.

U. S. v. *Collins*, 79 Fed., 65.

The Shustek case, *supra*.

Warenzak's case (note, 11 Am. Crim. Rep., 376).

Armstrong v. *Van de Venter* (extradition case), 21 Wash., 682; 12 Am. Crim. Rep., 327.

All of the elements of the crime must be stated.

State v. *Murray*, 41 Iowa, 580 (opinion in note, 11 Am. Crim. Rep., 375).

Cranor v. *State*, 39 Ind., 64.

Slusser v. *State*, 71 Ind., 280.

Barfield v. *State*, 39 Tex. Crim. Rep., 342; 11 Am. Crim. Rep., 384.

State v. *Cruikshank*, 71 Vt., 94; 11 Am. Crim. Rep., 385.

State v. *Fiske*, 20 R. I., 416 (opinion in note, 11 Am. Crim. Rep., 375).

A criminal complaint, being a statement of the facts, should be at least as specific as an indictment.

People ex rel. Lawrence v. *Brady* (extradition case), 56 N. Y., 182.

Vandever v. *State*, 1 Marvel, 209; 11 Am. Crim. Rep., 355.

The words "complaint" and "affidavit" are not synonymous; and accordingly, the word "affidavit," instead of "complaint," should be used in extradition proceedings.

State v. *Richardson*, 34 Minn., 115.

The following are several extradition cases in which the affidavit or complaint was held insufficient:

State v. *Smith*, 21 Neb., 552.

Ex parte Spears, 88 Cal., 640.

Ex parte McCabe, 46 Fed., 363.

In re Heilbonn, 1 Parker Cr. R., 429.

Ex parte Rowland, 35 Tex. Crim. Rep., 108.

In re Coleman, 15 Blatchford, 406.

People ex rel. Lawrence v. *Brady*, *supra*.

ARGUMENT.

Whatever is or may have been the practice in foreign countries, where doctrine of, *king and subject*, is or was recognized, no extradition can lawfully be granted, by either national or state authority, within the territory of the United States, except upon positive written law. The organic character of our national and state governments, recognizes the right of individual freedom superior to the arbitrary will of a president or governor. By the United States constitution the states are denied the functions of a nation in international or interstate matters, except where such power is expressly granted; while the United States, being created by the constitution, is limited to the powers granted to it. With us, international extradition is based on the delegated constitutional power of the national government to enter into treaties with foreign nations; and interstate extradition, on the power granted by the national constitution, made operative by the Act of Congress (Article IV, Section 2, Clause 2, U. S. Constitution, and Section 5278, R. S. U. S.).

Hyatt v. *People*, 188 U. S., 691; 12 Am. Cr. R., 311.

Interstate Extradition.

In treating of interstate extradition, in *Ex parte* Morgan, 20 Fed., 298, the court said:

> "In a case of this kind, the chief executive of a state cannot act on grounds of public pol-

> icy. His power, and his only power, under the law as it now stands, to extradite a person from his state, must be found in the constitution and laws of the United States. If it is not there, it does not exist. Not only the power, but the manner of its exercise, is based exclusively on the constitution of the United States, and the law of Congress passed in pursuance thereof. Interstate extradition is regulated by law. No such power can ever be exercised by the chief executive of a state on the ground of comity. Rorer, Interstate Law, 225. Nor has it ever been in this country properly and legally exercised on such grounds."

Interstate extradition, being solely dependent upon the United States constitution and the laws of Congress, comes within the doctrine, that to maintain a statutory proceeding, the requirements of the statute must be strictly complied with, and that such facts must be apparent upon the face of the record. This doctrine, which is applied to statutory proceedings at law, should be equally applicable to the matter now under consideration. The doctrine was very forcibly announced by the late Justice Bailey in *Faas* v. *O'Connor*, 6 Brad., 593 (597), in which he held, that whatever may be the presumption as to the jurisdiction of a court "in proceedings which call into exercise the ordinary common law powers of a court of general jurisdiction," it must be remembered that it is "a well-settled rule that Superior Courts, when in the exercise of special statutory authority, are not entitled to the same presumptions in favor of their judgment, as when in the exercise of their general powers"; citing *Heywood* v. *Collins*, 60 Ill., 328; *Firebaugh* v. *Hall*, 63 Ill., 81; *Lapham* v. *Edgerton*, 9

Cowan, 227. These authorities we cite to illustrate the general principle underlying all procedures, regardless of the fact, whether the proceeding is in a court or before the executive; for it affects the individuals in either case alike.

Not only is this proceeding based upon the statute, but it is an interference wtih personal liberty, and comes within the same rule applying to a penal statute,—that all statutes in derogation of personal liberty must be strictly construed and matters of doubt resolved in favor of the accused.

With accentuated force this rule applies to interstate extradition, by which an accused may be carried into a distant jurisdiction, to be tried among strangers, crippled it may be, in his means of defense, and unable to secure evidence showing a lifelong unimpeachable reputation. Even should he succeed in his defense, there is no provision for his return, and he is left, it may be, penniless, far from home, family, business and friends, among hostile strangers.

The opportunities which interstate extradition proceedings furnish for the enforcement of money claims, the wreaking of personal vengeance or the levying of blackmail, are also potent reasons why a strict compliance with the statutes should always be required, and that no citizen should be carried beyond the jurisdiction of his own state, unless the provisions of the constitution, and of the laws of Congress be complied with in both letter and spirit.

IT IS NOT SHOWN THAT THE RELATOR IS A FUGITIVE FROM JUSTICE.

In *Hyatt* v. *People, supra*, it is settled beyond all doubt that the term "fugitive from justice," as used in extradition proceedings, does not apply to one who constructively commits a crime in another state; but that interstate extradition can only be had, of one who was physically present within the territory of a state at the time of the commission of a crime therein, and subsequently fled therefrom.

This brings us to the question as to whether, under the present proceeding, the relator is legally shown to be a fugitive from justice and liable to extradition. The only reference to this subject is in the requisition itself, and the *unsworn* statement of the district attorney.

In the case of *In re Jackson*, 2 Flippin, 183, decided May 22, 1878, the relator was discharged by the District Court of the United States for the Western District of Michigan from arrest upon an extradition warrant, because it did not affirmatively appear by *lawful evidence* that he was a fugitive from the State of Massachusetts. In the course of the opinion, the court said:

> "Now, it is manifest that before the executive of Michigan is authorized to issue his warrant to cause to be arrested and secured a person charged in another state with crime, it should be shown by evidence making a *prima facie* case that such person has fled from the demanding state. This should be shown by competent evidence, as the fact of fleeing lies at the foundation of the right to issue a warrant of extradition. *The certificate of the demanding governor*

is no evidence of the fact. Neither the Act of Congress nor any rule of evidence, makes his certificate evidence of such fact."

Again, the court says:

"The evidence that the person has fled from justice must not only be satisfactory to the governor, but must be legally sufficient before the executive authority can be exercised. He cannot act upon rumor, nor upon the mere representation of a person, nor upon the demanding governor's certificate. *It should be sworn evidence, such as will authorize a warrant of arrest in any other case.*"

After reviewing authorities, the court concludes the opinion by commenting on the fact that prosecutions are frequently instituted on insufficient evidence and for purposes of revenge or blackmail.

In the case of *In re Doo Woon*, 18 Fed., 898, the relator was discharged by a writ of *habeas corpus* from an arrest under an extradition warrant. In the course of the opinion the court said:

"The removal of a person from one state, as a fugitive from justice, is a matter of the highest importance, and cannot be made upon less evidence of the party's *guilt and flight* than would authorize a warrant and arrest in an ordinary case. And this, both by the constitution of the United States and of this state, is nothing less than information on oath, which gives probable cause to believe that the person demanded has committed a particular crime against the law of the state making the demand, and that he has fled therefrom on that account."

The court also held that:

"The warrant must bear on its face the evidence that it was duly issued."

In the case of *Ex parte* Reggel, 114 U. S., 642, Mr. Justice HARLAN says:

> "The only question remaining to be considered relates to the alleged want of competent evidence before the governor of Utah at the time he issued the warrant of arrest, to prove that the appellant was a fugitive from the justice of Pennsylvania. Undoubtedly, the Act of Congress did not impose upon the executive authority of the territory the duty of surrendering the appellant, unless it was made to appear, in some proper way, that he was a fugitive from justice. In other words, the appellant was entitled, under the act of Congress, to insist upon proof that he was within the demanding State at the time he is alleged to have committed the crime charged, and subsequently withdrew from her jurisdiction, so that he could not be reached by her criminal process. The statute, it is to be observed, does not prescribe the character of such proof; but that the Executive Authority of the territory was not required, by the Act of Congress, to cause the arrest of appellant, and his delivery to the agent appointed by the Governor of Pennsylvania without proof of the fact that he was a fugitive from justice, is, in our judgment, clear from the language of that Act. Any other interpretation would lead to the conclusion that the mere requisition by the Executive of the demanding State, accompanied by the copy of an indictment, or an affidavit before a magistrate, certified by him to be authentic, charging the accused with crime committed within her limits, imposes upon the Executive of the State or Territory where the accused is found, the duty of surrendering him, although he may be satisfied, from incontestable proof, that the accused had, in fact, never been in the demanding State, and therefore could not be said to have fled from its justice. Upon the Executive of the State in which the accused is found rests the responsi-

> bility of determining, in some legal mode, whether he is a fugitive from the justice of the demanding State. He does not fail in duty if he makes it a condition precedent to the surrender of the accused that it be shown to him, by competent proof that the accused is, in fact, a fugitive from the justice of the demanding State."

In the case of *Roberts* v. *Reilly*, 116 U. S., 80, the prisoner was remanded because there was evidence by affidavits presented to the Governor who issued the extradition warrant, that the prisoner had fled from justice, and there is no positive evidence on behalf of the relator contradicting such evidence. The court held that the question as to whether or not he was a fugitive from justice was a question of fact to be determined by evidence before the Governor upon whom the demand was made.

In each of the above two cases the record showed that there was evidence under oath, presented to the Governor upon whom the demand was made. In the case now on hearing there was no evidence under oath presented to the Governor of Illinois.

In the case of *Hyatt* v. *People, supra*, the court was not called upon to pass upon the sufficiency of the evidence; for it was conceded, that the relator was not in the demanding State at the time of the commission of the alleged crime; but the court approved the doctrine laid down in *Ex parte Reggel*, and held that while the governor's warrant may be *prima facie* sufficient to hold the accused, that the subject is open to inquiry upon a writ of *habeas corpus*. The court said:

> "If upon a question of fact made before the Governor, which he ought to decide, there was evidence *pro* and *con*, the courts might not be justified in reviewing the decision of the Governor upon such a question. In case like that, where there was some evidence sustaining the finding, the courts might regard the decision of the Governor as conclusive."

It will be observed that in the Hyatt case the court simply intimated that the finding of the Governor might be conclusive; but did not lay down any positive rule as to the sufficiency of the evidence; but be that as it may, all the above authorities agree that the question as to whether or not the accused fled from justice is a question of fact, the affirmative of which must be shown by competent evidence under oath before any extradition warrant can issue. This doctrine is sustained by the fourth amendment to the Constitution of the United States, which declares that:

> "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation."

Not only was the fourth amendment of the Constitution of the United States binding upon the Governor of Illinois, but he should also have taken into consideration Section 6, Article 2, of the Constitution of Illinois, which provides, "that no warrant shall issue except for probable cause, supported by *affidavit*." In construing this section, the Supreme Court of Illinois has said:

"It is a step beyond the Constitution of the United States, in requiring the evidence of probable cause to be made a permanent record in the form of an affidavit." (*Lippman* v. *People*, 175 Ill., 101-112, 11 Am. Crim. Rep., 356-366.)

DO THE LAWS OF WISCONSIN ENTITLE THAT STATE TO THE BENEFITS OF INTERSTATE EXTRADITION, EXCEPT ON CASES OF INDICTMENT.

Section 5278 U. S. R. S., copied in full in our brief, under sub-heading "STATUTORY REQUIREMENTS," limits interstate extradition to cases where the Governor of the demanding State has "produced a copy of an indictment found, or an affidavit made before a magistrate in any state or territory, *charging* the person demanded with having committed treason, felony or other crime." In construing this section, the United States Court of Appeals in *Ex parte Hart*, 11 C. C. A., 165, held,—that while each State may regulate its own practice yet it is not entitled to the benefits of interstate extradition law, unless its practice complies with the provisions of that section. In that case it was held that,—producing a copy of an information filed by the prosecuting attorney, was not a compliance with the requirements of Section 5278 U. S. R. S., in that, the party was not charged by the indictment found, or, by an affidavit made before a magistrate charging the crime. While this decision of a lower court may not be considered as authority, we feel that without any authority whatever, any court would arrive at the same conclusion. As was held in *Hyatt* v. *People, etc., supra,* and *Commonwealth* v. *Dennison, supra*, the power to extradite is not granted by the

Constitution; but the Constitution simply grants to Congress the power to enact extradition laws. This being the fact, the only authority which the Governor of any State has to issue an executive warrant, to carry an individual beyond the limits of his own State, is granted by Section 5278 U. S. R. S. It will be observed that the power granted is based upon a condition precedent and cannot be exercised until that condition is performed. There is no general grant of power to the Governor, followed by a practice act; but the manner in which the extradition warrant is applied for is prescribed by the statute as the basis of the authority of the Governor to act. His inherent powers as a Governor of the State, does not authorize him to interfere with the personal liberty of one who has fled from another jurisdiction. He is not an emperor, a king or a sultan; but he is simply the chief executive of an American state, which does not possess the character of an independent nation. He cannot enter into any diplomatic relations either with a foreign government or with any other State of our Union; hence he has no general authority to honor the requisition of any American governor or foreign potentate. His power in interstate extradition is momentary and can only be exercised when the emergency arises. The only emergency that can arise is when the requirements of Section 5278 U. S. R. S. have been complied with. The matter is purely transitory, and until he is furnished with a copy of an indictment found, or affidavit before a magistrate *charging a crime*, he is as powerless to act as is a private individual. Our extradition laws were first

enacted February 12, 1793, and for more than one hundred years have remained unchanged. When Congress enacted the Extradition Act, now known as "Section 5278 U. S. R. S.," it was clearly the intention of the legislators to limit it to certain cases, so that which was intended as an avenue for justice should not become the highway of malice, spite, commercial interests or blackmail. Certainly Congress never intended that by presenting a voluntary affidavit before a justice of the peace, accusing an individual of certain wrongful acts, that the person then was legally charged before a magistrate with a crime. There can only be one correct interpretation put upon the word "charging" as used in the Act of Congress,—and, that interpretation must be that the person is charged by affidavit in the manner and form of the practice of the demanding State. The question now arises whether the filing of an affidavit before a justice of the peace in the State of Wisconsin accusing an individual of an indictable offense is legally charging the offense in accordance with the statute and practice in the State of Wisconsin.

Sections 4775 and 4776 of the Revised Statutes of Wisconsin are as follows:

> "Section 4775. For the apprehension of persons charged with offenses the judges of several courts of record in vacation as well as term time, court commissioners and all justices of the peace are authorized to issue process to carry into effect the provisions of this chapter.
>
> "Section 4776. Upon complaint made to any such magistrate that a criminal offense has been committed, he shall examine, on oath, the complainant and any witness produced by him,

> and shall reduce the complaint to writing and shall cause the same to be subscribed by the complainant; and if it shall appear that any such offense has been committed the magistrate shall issue a warrant reciting the substance of the accusation, and requiring the officer to whom it shall be directed forthwith to take the person accused and bring him before the said magistrate, or before some other magistrate of the county, to be dealt with according to law; and in the same warrant may require the officer to summon such witnesses as shall be therein named to appear and give evidence on the examination."

It will here be observed that statute does not require an affidavit or written complaint under oath to be filed as the basis of the warrant; but that the magistrate shall issue the warrant, if, from the oral evidence of the witnesses examined it shall appear that any offense has been committed. This is not simply our construction of the statute; but it is the construction placed upon it by the Supreme Court of Wisconsin in the case of *State* v. *Davies,* 62 Wis., 205;—hence, there is no such practice known in the State of Wisconsin as *charging* an indictable crime by affidavit before a magistrate. The magistrate does not try the case; but simply causes the individual to be brought in, that he may determine whether or not there is good and sufficient grounds to hold him for trial in a higher court.

The Constitution of Wisconsin does not require an affidavit; but simply provides that no warrant shall issue except for probable cause supported by *oath or affirmation.* If the Constitution of Wisconsin were like that of Illinois, which provides, that no warrant shall issue except for probable cause

supported *by affidavit* the case might be different; but as the practice now stands in Wisconsin neither the Constitution nor the Statute requires the filing of an affidavit;—hence, any affidavit filed is but a voluntary affidavit on which perjury could not be assigned (*Silver* v. *State*, 17 Ohio, 365; *Beecher* v. *Anderson*, 45 Mich., 543).

The Legislature of Wisconsin has created its own practice acts, presumably with full knowledge of the Acts of Congress. If it deemed proper to legislate the State of Wisconsin outside of the benefits of interstate extradition laws, that was its privilege. *It has done so*,—and the state must accept the situation as it is.

The court will take judicial notice of the fact, that the grand jury system is not abolished in the State of Wisconsin, and that the authorities of that state could have proceeded regularly in this regard. It seems that while the grand jury system is not abolished by law, the practice of filing informations by prosecuting attorneys is allowed by statute; and this questionable and dangerous practice has found favor in that state. It may be that Congress had in mind such practice when it limited the powers of governors to grant extradition warrants. A reasonable construction of the Acts of Congress would be: That where the offense was an indictable offense, then a copy of the indictment should be furnished; but where the offense was not an indictable offense, but triable before a justice of the peace upon a written complaint under oath, then a copy of that complaint or affidavit should be furnished. The statute possibly may be construed to cover those cases

where as a matter of emergency extradition is demanded before a grand jury can convene, and that the extradition may be based upon regularly conducted proceedings before a magistrate; provided, that the legal basis of such proceedings is an affidavit. But it is certainly trifling with the rights of persons to permit the extradition of an individual, simply because some person appears before a magistrate and files a voluntary affidavit. The record in this case well illustrates the danger of such reckless proceedings; for it here appears, that the chief of the police, in a formal affidavit which does not state facts, but is written in the choice language of the law (*Sarah Way's case*, 41 Mich., 299) charges that a larceny was committed against the person of one Thomas Hanson against his will, and gives no reason why the affidavit of Thomas Hanson himself was not made, or what source of information the chief of police had. If the act was done in the presence of the chief of police, it was his duty to then and there arrest the criminal; and if not done in the presence of the chief of police, then he makes the complaint only on information and belief; and it is therefore void. The case is quite similar to that of *Hart* v. *Grant*, 8 S. D., 248, cited in the brief, where from the reading of an affidavit it naturally appeared that the affiant did not have personal knowledge and it was held to be a void affidavit; as also in the case of *Finley* v. *De Castroverde, supra.*

If, according to the statutes of Wisconsin, the warrant issued upon oral evidence, then we have not a copy of the accusation; and if this affidavit of the chief of police is to be considered the only proceed-

ing had, then it would affirmatively appear that the justice did not examine the witnesses; hence, in either position the proceeding is void.

The Affidavit.

Recurring again to the matter of the affidavit, if such it may be termed, we respectfully refer to the cases cited in the brief in proof that it does not possess the qualities of an affidavit. It was made as matter of form in the refined language of the law, not easily understood by the ordinary individual, and not such a statement of fact, which if orally stated would be *received as evidence*. An affidavit is generally considered a brief statement of evidence. It should be so plain that if the same words were used orally it would be legitimate evidence to make out a *prima facie* case. That which is sufficient as a pleading, may be insufficient as an affidavit.

In *Sheridan* v. *Briggs*, 53 Mich., 569, the court held that a certain affidavit was insufficient to sustain a *capias ad respondendum;* one of the reasons given was that the language of the affidavit should be such that if stated at the trial it would be legitimate testimony. In the course of the opinion the court said:

> "What would be quite sufficient in a pleading would, in most instances, be entirely insufficient in an affidavit to hold to bail. The reason is obvious. In pleadings the evidence is not required to be set forth. But no arrest can be made except upon sworn evidence of facts."

In the case of *People* v. *Brady* (extradition case), 56 N. Y., 182 (cited in the brief), on page 190 the court says:

> "It cannot be held that any less degree of certainty is admissable in an affidavit charging conspiracy than is required in an indictment for the same offense. If any distinction exists in this respect, the affidavit should be more full and specific. It is usually the *ex-parte* statement of the accuser. An indictment is found by a body standing indifferent between the parties, and charged, upon oath, to inquire of offenses, and which is supposed to act upon competent proof in finding the bill."

See also: *State* v. *Fiske*, 20 R. I., 416, 11 Am. Crim. Rep., 375; *Vandever* v. *State*, 1 Marvel, 209, 11 Am. Crim. Rep., 355; *State* v. *Cruikshank*, 71 Vt., 94, 11 Am. Crim. Rep., 385.

A CRIMINAL PROCEEDING BASED ON AN AFFIDAVIT ON INFORMATION AND BELIEF OR WHICH DOES NOT STATE THE FACT, IS VOID.

In *Sarah Way's Case*, 41 Mich., 299, the affidavit was in the language of the statute or ordinance. The prisoner was discharged by a writ of *habeas corpus;* and this after conviction. In his opinion Chief Justice Campbell declared that such affidavit did not meet the requirements of the constitution. In *Moore* v. *Watts Breese*, 18, Beecher's Breese, 42, the court held that a justice of the peace was liable for false imprisonment, he having issued a warrant on an affidavit, charging that A. B. had entered the premises of C. D. and carried off her grain. In the opinion the court said that it mattered not what it was intended to be charged, the affidavit did not charge

a crime and did not give the justice jurisdiction to issue the warrant.

In *Housh* v. *People*, 75 Ill., 487, the court held that a constable was not liable for permitting a prisoner to escape, if the complaint on which the warrant issued did not charge sufficient fact to authorize the issuance of the warrant.

In *ex-parte Dimmig*, 74 Cal., 164, the Supreme Court of California discharged the relator because the affidavit on which the warrant issued was made on information and belief. In that case, as in this, it was made by the chief of police. In *U. S.* v. *Collins*, 79 Fed., 65, an indictment against the defendant accusing him with obstructing justice, was quashed. Collins had been subpoenaed to appear before a United States Commissioner in a criminal case, to testify and produce certain documents against the prisoner. It does not seem that the prisoner made any objection to the complaint filed against him; but the court held that as the affidavit was made on information and belief, the United States Commissioner did not acquire jurisdiction over the prisoner and therefore had no authority to require Collins to appear and testify.

In *ex-parte Lane*, 6 Fed., 34, which was an extradition case, the prisoner was discharged on *habeas corpus* because the affidavit was made on information and belief.

In *Rice* v. *Ames*, 180 U. S., 371, the doctrine is clearly announced that affidavits on information and belief do not confer jurisdiction.

In *Lippman* v. *People*, 175 Ill., 101, 11 Am. Crim.

Rep., 356, an act of the legislature was declared unconstitutional for the same reason.

In *ex-parte Morgan*, 20 Fed., 298, the prisoner was discharged upon *habeas corpus* for the same reason.

In *State* v. *McGahey*, —— N. D., ——, 97 N. W. Rep., 865, the defendant was discharged from contempt of court proceedings for the same reason.

In *Armstrong* v. *Van de Venter*, 21 Wash., 682, 12 Am. Crim. Rep., 327, the Supreme Court of the State of Washington ordered that Armstrong be released from an extradition warrant for the following reasons: Armstrong was indicted in the Criminal Court of Cook County, Illinois, for interfering with a supposed criminal proceeding pending before Justice Martin in Chicago. The indictment set forth that proceeding. The complaint in it did not set forth sufficient facts to clearly show the crime supposed to be charged. The court held that, the indictment therefore did not charge Armstrong with a crime, because he did not interfere with a legal proceeding. In other words, that Justice Martin had absolutely no jurisdiction because of the defective complaint.

We might continue to review numerous other cases cited in our brief; but we consider for the present these sufficient to demonstrate the principle of law that unless the affidavit filed before a magistrate is positive in form, and appears to be made from personal knowledge, and states facts sufficient to constitute a cause of action, that the warrant issued upon it is void.

THE DOCUMENTS ARE NOT PROPERLY CERTIFIED TO.

As before stated in our Statement of the Case, the affidavit of the chief of police is not properly authenticated. The only effort, if the document has not slid in among the papers by mistake, is a certificate of the Clerk of the Circuit Court (Rec., 21-22; Printed Rec., 12) purporting to certify to some *instrument that was acknowledged.* This certificate is certainly foreign to the case. It may be that it was simply a printed form, that the clerk thought would be sufficient; but papers of such importance should not be certified to as a matter of form. Filling printed blanks with names, dates, etc., irrespective of the features of the particular case has been severely condemned by more than one court. (*Lippman* v. *People, supra; Sarah Way's Case, supra.*) In a case involving personal liberty such careless practice should not be tolerated. There is no certificate to the name of the justice who took the affidavit in question; and accordingly it should be presumed that the clerk made this certificate for some other purpose. Still less is a certificate to the warrant which is certified to by the justice himself. (Rec., 23; Printed Rec., 13.) This is like a man testifying to his own good reputation for truth and veracity.

THE GOVERNOR'S WARRANT.

Section 1, Chapter 60, Ill. R. S., provides that "the warrant shall be directed to any sheriff, coroner or constable of any county of this state, or other person who said executive may think fit to entrust with the execution of this process." This

clearly indicates that the Governor should select the person to serve the warrant and not simply direct it to any or all of these officers, as was done in this case. At the first glance this objection may seem technical; but we must presume that this statute was enacted in connection with the other statutes of the state, among them Section 229 to the Criminal Code, which requires that any person about to be removed from the state shall be given sufficient time to defend himself against such removal. It is evidently contemplated by the statute that the Governor should direct the warrant to some particular individual in whom he reposed confidence, and not to place it in the hands of a foreign agent, who may deliver it to some constable, with an understanding that the accused shall be seized at an unseemly hour and immediately sent beyond the territorial limits of the state. To us, it seems that this form of warrant should be condemned as a general warrant,—unauthorized by law.

The Governor's warrant does not show that he has been furnished with a copy of an affidavit made before a magistrate; but he refers to "the copy of a complaint and affidavit made *by* and before a properly empowered officer." It does not show that such officer was a magistrate within the meaning of the Act of Congress; nor even that it was made before him. The language of the warrant is "*by* and before"; that is, that the officer *made* the affidavit before himself. It does not appear that the warrant was issued upon proper proof that the accused was a fugitive from justice.

Respectfully submitted.

John T. Gerting,
Attorney for Plaintiff in Error.

Office Supreme Court, U. S.
FILED.
OCT 14 1907
JAMES H. McKENNEY,
CLERK.

No. 19.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1907.

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. JOHN McNICHOLS,
Plaintiff's in Error.

vs.

JAMES PEASE, Sheriff of Cook County, Illinois,
Defendant in Error.

Error to
The Supreme Court
of Illinois.

Brief and Argument for Defendant in Error.

JOHN J. HEALY,
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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1905.

PEOPLE OF THE STATE OF ILLINOIS, ex rel. JOHN McNICHOLS, *Plaintiffs in Error.*	Error to The Supreme Court of Illinois.
vs.	
JAMES PEASE, Sheriff of Cook County, Illinois, *Defendant in Error*	

Brief and Argument for Defendant in Error.

THE CASE STATED.

MAY IT PLEASE THE COURT:

The relator, John McNichols, is held by the respondent, James Pease, sheriff of Cook County, Illinois, under and by virtue of the authority of a certain warrant of extradition in which warrant the sheriff, respondent, is directed to deliver the body of the said John McNichols into the custody of the messenger of the governor of Wisconsin to be returned to the jurisdiction of Wisconsin as a fugitive from justice.

McNichols was first arrested in Chicago on a fugitive warrant in December, 1905. A writ of *habeas*

corpus was issued out of the Circuit Court of Cook County commanding the production of his body before Judge Gibbons, judge of the Circuit Court, together with the authority for his capture and detention. At the hearing upon the writ of *habeas corpus* the respondent certified as his authority to detain McNichols not only the fugitive warrant, upon which relator had been first arrested, but also a governor's warrant of extradition issued by Charles S. Deneen, governor of Illinois, authorizing the return of McNichols to the State of Wisconsin. Counsel for the relator sought to have McNichols discharged by order of the court in the *habeas corpus* proceeding on the following grounds:

1st. That the warrant of extradition was void upon its face.

2nd. That the record constituted by the papers on file before the governor of the State of Illinois was not sufficient to authorize the issuance of the extradition warrant.

3rd. That the relator was not in fact a fugitive from justice.

In support of the first and second contentions, the arguments made before Judge Gibbons and subsequently made before the Supreme Court of the State of Illinois, by attorney for relator are substantially the arguments made to this court in the brief filed in the case at bar.

In support of the third contention, the relator offered evidence to prove that he was not a fugitive from justice. The substance of the evidence is contained in the affidavits appearing in the Brief and

Argument of counsel for plaintiff in error. The purpose of the evidence submitted was to prove to the court that on the day the crime was charged to have been committed in Wisconsin, the relator was attending a baseball game in Chicago. The respondent in that hearing did not contend or concede that the day named in the affidavit and complaint was the particular day upon which the crime was committed, refused to offer any testimony as to the merits of the case, but rested entirely upon the sufficiency of the allegations in the governor's warrant and the matters appearing of record in the papers filed with the demand for the extradition of McNichols by the governor of Wisconsin. After a full hearing before Judge Gibbons the relator was remanded to the custody of the sheriff without prejudice, that the case might be presented to the Supreme Court.

McNichols immediately applied for a writ of *habeas corpus* to the Supreme Court of Illinois. The writ issued and was made returnable to the December, A. D. 1903, term of said court, and after oral arguments and the submission of printed briefs, the Supreme Court remanded the relator. From the remanding order in that cause, the relator prosecuted this writ of error to this court:

BRIEF.

I.

The only questions which may be raised to defeat a governor's warrant for extradition properly issued are:—

1. Is the governor's warrant valid upon its face?
2. Was the governor's warrant properly issued?
3. Is the person apprehended the identical person demanded?
4. Is the person demanded a fugitive from justice?

Church on Hab. Cor., Sec. 478 and 480.

II.

A fugitive from justice is a person charged with a crime in the courts of one state and being there wanted to answer for said offense is found in another state.

Church on Hab. Cor., Secs. 480 and 478.
Roberts v. *Reily*, 116 U. S., 80.
Ex-parte Reggeld, 114 U. S., 642.

III.

Wherever the validity of a governor's warrant is made the subject of judicial inquiry, the recitals in said warrant are to be taken *prima facie* as true.

Ex-parte Stanley, 25 Tex. Appeals, 372.
Church on Hab. Cor., page 626, Sec. 486.
Leary's Case, 10 Ben., 197.
Hyatt v. *Cockran*, 188 U. S., 709-715.
Munsey v. *Claugh*, 196 U. S., 372.

IV.

The technical sufficiency of the indictment or complaint charging a crime against a defendant, will not be considered on writ of *habeas corpus* in extradition procedure—that is a question for the courts of the demanding state.

Davis' Case, 122 Mass., 324.
Brown's Case, 112 Mass., 409.
Ex parte Sheldon, 34 Ohio, 319.
State v. *Schleman*, 4 Harr. (Del.), 577.
Ex parte Vorhees, 32 N. J. L., 141.
Pea v. *Brady*, 56 N. Y., 182.
In re Greenough, 31 Vt., 279.
In re Manchester, 5 Calif., 237.
In re Leland, 7 Abb. Pr. N. S., 64.
In re Briscoe, 51 How. Pr., 422.
In re Clark, 9 Wendall, 212

V.

Technical defect of indictment apparent upon its face will not make void governor's warrant.

Church on *Habeas Corpus*, page 316, Sec. 246.

VI.

Evidence of an alibi cannot defeat extradition warrant. It is not conclusive evidence.

Hyatt v. *Cockran*, 188 U. S., 715.

VII.

The issue of a warrant of extradition is wholly a matter of executive discretion which discretion is not subject to review by the courts. Only questions of law and fact arising upon the face of the record are subjects of judicial inquiry.

55 L. R. A., 325.
7 Colo., 384.
21 Iowa, 467.
116 U. S., 80.
In re Leary, 8162 Federal Cases.
Spellman Ex. Rem., Vol. 2, Sec. 1291.

VIII.

Evidentiary facts need not be set out in the affidavit. It is sufficient to make the charge explicit and certain.

Hurd on Hab. Cor., 2nd Ed., page 611.

Errors Assigned.

Counsel for plaintiff in error, on page 10 of his brief, presents a specification of the errors relied upon for the reversal of judgment in the case at bar. These errors briefly stated are as follows:

1st. The court erred in dismissing the writ.

2nd. The court erred in holding that the demand of the governor of Wisconsin was legal.

3rd. The court erred in holding that the extradition warrant directed to any sheriff was properly directed.

4th. The court erred in refusing to accept affidavits containing evidence of an *alibi*.

5th. The court erred in refusing to discharge the relator.

6th. The court erred in holding that the laws of Wisconsin sustain the right to extradite.

Following these specifications, counsel for plaintiff in error suggests that all of them are covered by specifications 1 and 5. On this point he says:

> "As the court below did not give a written opinion nor make any specific findings of record, the first and fifth assignments of error cover all the others."

These two assignments are:

1st. The court erred in dismissing the petition.

2nd. The court erred in refusing to discharge relator upon the consideration of the petition and return.

Errors Considered.

Considering all the errors assigned as embraced in the last above name, two assignments of error, it is plain to be seen that they really constitute one alleged error,—the court refused to discharge the relator because it dismissed his petition. Argument, therefore, on behalf of the respondent will be confined to justifying the act of the court in dismissing the petition filed by relator.

The relator is held in custody by James Pease, sheriff of Cook County, under and by virtue of the authority of a warrant of extradition issued by the governor of the State of Illinois, and unless otherwise directed by this Honorable Court, he will deliver the relator into the custody of the governor's messenger from the State of Wisconsin, to be taken to that state for trial upon a charge pending in the courts of said state.

Counsel for relator contend that the relator should have been discharged from operation of the governor's warrant by the court below, on the grounds:

1. That the warrant on its face is void.

2. That the record, constituted by all the papers on file before the governor of the State of Illinois, is not sufficient to sustain the issue of an executive warrant.

3. That a fugitive from justice may defeat an extradition warrant by presenting an alibi.

All of these contentions are questions of law and by reason of the large number of adjudicated cases

they are easily disposed of. The points made will be here considered as above presented.

The Warrant Itself.

The governor's warrant of extradition is a process which, if regular upon its face, is *prima facie* sufficient to hold the relator. Its recitals are to be taken as true, and if the recitals made are in compliance with the United States statutes governing extradition proceedings, the warrant will be held valid by the courts.

The formal requirements of the United States statutes are few and whether or not they are complied with requires only the most casual examination of the warrant and the statute. In the case at bar there cannot be the slightest difficulty in determining that as to the statutory requirements, the executive warrant is a valid instrument.

According to the statute regulating extradition, Section 5278 of the Revised Statutes of the United States, in order to secure the extradition of a fugitive from justice, it is only necessary for the governor of the demanding state to certify to the governor of the asylum state:—

1. That the person sought to be extradited is duly charged with a crime in the demanding state.

2. Transmit with his request for requisition warrant a copy of the indictment or affidavit charging an offense against the person demanded.

3. Certify that the papers submitted as basis for extradition warrant are authentic, and

4. That the person sought for is a fugitive from justice and is located in the asylum state.

Church on Hab. Cor., Sec. 480.
Spellman on Ex. Rel., Vol. 2, Sec. 1273.
Roberts v. *Reilly*, 116 U. S., 80.

Upon the faithful compliance with these requirements it becomes the duty of the governor of the asylum state to issue his executive warrant for the apprehension of the fugitive and his return to the authorities of the demanding state. The issue of that warrant is an act of the executive department of the state after the exercise of executive discretion, and so far as the technical force and effect of the warrant is concerned the recitals made in the warrant must be taken as *prima facie* true.

"On *habeas corpus*, where the prisoner is held under an extradition warrant of the governor, which recites that it was issued upon the requisition of the governor of another state, accompanied by a copy of an indictment, certified as duly authenticated, the warrant is conclusive evidence that the person therein named stands charged with crime in such other state within the meaning of the Constitution."

Spelling on Extraordinary Relief, Vol. 2, Sec. 1308.

On the same subject, Church on Hab. Cor., page 621, Sec. 480, says:—

"The general rule, supported by a preponderance of authorities is, that the warrant of the governor is *prima facie* evidence at least, that all necessary legal prerequisites have been complied with, and if

the previous proceedings appear to be regular, is, as a general rule, conclusive evidence of the right to remove the prisoner to the state from which he fled."

The same author, speaking on the scope of inquiry by courts, on page 626, Sec. 486, says:—

"When a fugitive criminal alleges, on petition for *habeas corpus*, that he is unlawfully deprived of his liberty, the court, if it can act at all, may inquire whether the governor's warrant is *prima facie* sufficient to justify the arrest and removal. The right to hold the relator depends wholly upon the sufficiency of the warrant of extradition on its face, and nothing else, and ordinarily a court will not on *habeas corpus* look behind the warrant."

Church in his work on *Habeas Corpus*, page 617, Sec. 475, clearly shows that the governor's discretion is not reviewable by the courts. He says:—

"We have seen that the discretion of the governor of a state cannot be controlled by the Federal judiciary, and the same rule is well settled in the states. The judiciary will never thus attempt to invade the executive branch of the government. But in deciding questions which arise under writs of *habeas corpus*, the judiciary may review and control the action of the governor in regard to points of law."

To what extent the courts will exercise revisory power over the governor's warrant is clearly stated by Spellman in his treatise on Extraordinary Relief in Vol. 2, Sec. 1275. He says:—

"As a general rule, while courts have undoubted

power to review and reverse decisions of executive authorities in extradition proceedings, yet they will not overrule such decisions except in clear cases of error and abuse. * * * The warrant of the governor is at least *prima facie* evidence, however, that all prior legal formalities and requirements have been complied with; and if the warrant be supplemented by previous proceedings which conform to the statutory requirements, such warrant becomes conclusive evidence of the right to remove the prisoner to the state from which he fled."

From this principle of law, unquestionably declared by many authorities, the warrant in the case at bar must be held to be plainly valid and in full force and effect in the hands of the sheriff of Cook County, because the warrant shows:

1. That the relator McNichols is duly charged in the State of Wisconsin with the offense of larceny from the person.

2. That the request for extradition is accompanied by the copy of a "complaint and affidavit."

3. The governor of Wisconsin certifies that the papers submitted charging McNichols with a crime and accompanying the demand for extradition are authentic, and

4. That the relator McNichols is represented to be a fugitive from justice.

As these recitals are plainly shown in the warrant and as they are all the recitals necessary to the validity of an executive warrant, the contention of counsel for relator, that warrant is void for matters apparent upon its face must fail.

THE RECORD SUSTAINS THE WARRANT.

The next question raised involves the consideration of all the papers filed in the office of the governor of the State of Illinois, and submitted by the governor of the State of Wisconsn as a basis for the issue of the warrant of extradition by the governor of the State of Illinois. This question is raised by the contention of counsel:

1. That the affidavit of the prosecuting witness as found in the record is not sufficient to justify the issue of the governor's warrant. It is contended that it does not state facts in detail and does not state that relator is a fugitive from justice. The text of the affidavit is as follows:

STATE OF WISCONSIN, } ss.
COUNTY OF KENOSHA. }

Fred W. Reinold, being first duly sworn and examined on oath by and before Benj. O. Sturges, a justice of the peace in and for said county, alleges that one John McNichols did, on the 30th day of September, A. D. 1905, at the City of Kenosha, in said county, two hundred ($200) dollars, lawful money of the United States, of the properties and monies of Thomas Hansen, then and there being found, from the person and against the will of said Thomas Hansen, feloniously steal, take and carry away, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Wisconsin, and prays that the said John McNichols may be arrested and dealt with according to law.

FRED W. REINOLD.

Subscribed and sworn to this 2nd day of October, A. D. 1905.

BENJ. O. STURGES,
Justice of the Peace.

An inspection of the affidavit, however, shows that it fulfills all the requirements of the law. This requirement is very briefly stated by Hurd in his work on *Habeas Corpus*. In the second edition, page 611, speaking of the accusation, the author says:—

"The affidavit, therefore, when that form of evidence is adopted, must be at least so explicit and certain that if it were laid before a magistrate, it would justify him in committing the accused to answer the charge."

Church, on the same subject, page 618, section 476, says:

> "The fugitive, on *habeas corpus*, cannot impeach the validity of the affidavit upon which the requisition was founded, if it distinctly charge the commission of an offense, which is all that is necessary. It need not set forth the crime charged with all the legal exactness of an indictment. The affidavit, furthermore, need not state that the prisoner is a 'fugitive from justice.'"

AFFIDAVIT SUFFICIENT IN DEMANDING STATE.

Reference to the affidavit filed in support of the application for requisition shows that it fully meets the requirements of the law, both in Illinois and Wisconsin. For the purpose of securing the arrest of a person suspected of crime in the latter state, the Wisconsin statutes require a complaint in writ-

ing under oath. The requirement referred to is found in Sections 4775 and 4776 of the Revised Statutes of Wisconsin.

These statutes are as follows:

> "Section 4775. For the apprehension of persons charged with offenses the judges of several courts of record in vacation as well as term time, court commissioners and all justices of the peace are authorized to issue process to carry into effect the provisions of this chapter.
>
> "Section 4776. Upon complaint made to any magistrate that a criminal offense has been committed, he shall examine, on oath, the complainant and any witness produced by him, and shall reduce the complaint to writing and shall cause the same to be subscribed by the complainant; and if it shall appear that any such offense has been committed the magistrate shall issue a warrant reciting the substance of the accusation, and requiring the officer to whom it shall be directed forthwith to take the person accused and bring him before the said magistrate, or before some other magistrate of the county, to be dealt with according to law; and in the same warrant may require the office to summon such witnesses as shall be therein named to appear and give evidence on the examination."

Following the requirements of the statutes above quoted, McNichols was charged with the crime of larceny by an affidavit in writing subscribed and sworn to before a justice of the peace. This is shown by the affidavit of Fred W. Reinhold above quoted and shown also on page 7 of the brief and argument for plaintiff in error.

Wisconsin May Extradite.

Counsel for plaintiff in error appears to urge seriously upon this court the contention that the state of Wisconsin has no remedy by extradition to bring back its fugitives from justice for punishment. He bases that contention upon his construction of Sections 4775 and 4776 of the Revised Statutes of Wisconsin, which sections he contends do not require an affidavit as a condition precedent to the arrest of a person suspected of crime.

From the text of these statutes it is contended that an affidavit filed prior to the issue of a warrant is a voluntary affidavit and one therefore which does not meet the requirement of the affidavit in the United States statutes controlling jurisdiction proceedings.

It is too late, however, to urge upon this court that the state of Wisconsin is without the pale of extradition rights. The proceedure under Wisconsin statutes has been attacked in the federal courts and a very noteworthy case, *in re* Keller Federal Reporter, page 681, it was held that the laws and practice complained against are sufficient.

McNichols Is a Fugitive from Justice.

The most insistent contention for plaintiff in error, to prove that the Supreme Court of Illinois erred in dismissing the writ of *habeas corpus*, is his claim that McNichols was not a fugitive from justice. It will be conceded that if McNichols was not a fugitive from justice, then the court did err in its refusal to discharge him but just as insistent as counsel for

plaintiff in error is that he was not a fugitive from justice, counsel for defendant in error contend that he was. And this is the vital point in the whole case. While counsel for plaintiff in error urges upon this court other objections to the action of the court below, the objections are highly technical. It is plain to be seen from the record in this case that McNichols presents his case to this court relying almost entirely upon the contention that he is not a fugitive from justice.

The consideration of this third contention necessarily involves the careful weighing of the expression "fugitive from justice"; for it is a misinterpretation of that term which leads counsel for plaintiff in error to insist that relator could submit evidence to prove an alibi when attacking the validity of the governor's warrant of extradition. His contention that five affidavits tending to prove that relator was in Chicago upon the same day he was charged with committing an offense in Wisconsin, indicates a misinterpretation of the leading authorities on the question of fugitive from justice. No authority can be found which authorizes a court to invalidate a governor's warrant by permitting the relator to prove an alibi. It is not permissible to try the merits of an extradition case in the courts of an asylum state. An alibi is a defense to the merits of the case and as such cannot be put in proof.

The Supreme Court of the United States has declared in unmistakable terms the conditions and circumstances which make a man a fugitive from justice. In *ex parte* Reggel, 114 U. S., 642, and *Roberts* v. *Riley*, 116 U. S., 180, the doctrine was laid

down so clearly that it ought not to be misunderstood. The question to be considered is not whether a relator can prove that he was in one place or in another on a certain day that makes him a fugitive from justice, but whether or not he is charged with a crime in the demanding state and being there wanted to answer to that charge is found in an asylum state.

The requisition warrant issues not because the person demanded has been proven guilty of a crime, nor is the governor of the demanding state required to certify that he is guilty of the crime charged. The only requirement of the Federal Constitution is that he be charged in the demanding state. When he is so charged, is wanted and not found, he then becomes a fugitive from justice.

The Hyatt case, 188 U. S., 715, is sometimes quoted as an authority to justify the pleading of an alibi in an extradition proceeding. A study of that case, however, shows that it was conceded by the demanding state authorities that Hyatt was not physically present in the state at the time of the commission of the crime. They insisted that whether he was or was not was a question which could not be tried in the asylum state.

But that theory was not approved by the Supreme Court, which announced a well settled principle, namely, that the constructive presence of a person in the demanding state is not sufficient to justify his surrender on a requisition.

There is no such contention in the case at bar. The defendant in error does not contend that McNichols was constructively present in Wisconsin, but

it claimed that he was actually present in Wisconsin at the time of the crime and the affidavit filed with the governor of Wisconsin, and submitted to the governor of Illinois, charging McNichols with crime in positive and direct terms, proves that McNicho's was physically present in Wisconsin on the day of the crime and while there committed the crime of larceny.

It was to rebut this positive evidence that plaintiff in error presented affidavits tending to show an alibi. They were not admissible for that purpose because they tended to determine the merits of the case. No claim was made in behalf of McNichols that he was not the identical person named in the governor's warrant. His only defense was that he was in Chicago on the day the affidavit for requisition charged him with being in Kenosha. The court below refused to consider these affidavits and remanded the prisoner to the custody of the sheriff. We confidently ask the affirmance of that judgment.

Respectfully submitted.

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State's Attorney.

F. L. BARNETT,
Assistant State's Attorney.

E. C. LINDLEY,
Of Counsel.

THE PEOPLE OF THE STATE OF ILLINOIS *ex rel.* McNICHOLS *v.* PEASE, SHERIFF OF COOK COUNTY.

ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

No. 19. Argued October 16, 17, 1907.—Decided November 18, 1907.

Habeas corpus is an appropriate proceeding for determining whether one held under an extradition warrant is a fugitive from justice; and he should be discharged if he shows by competent evidence, overcoming the presumption of a properly issued warrant, that he is not a fugitive from the demanding State.

A faithful, vigorous enforcement of the constitutional and statutory provisions relating to fugitives from justice is vital to the harmony and welfare of the States; and provisions of the Constitution should not be so narrowly interpreted as to enable offenders against the laws of a State to find a permanent asylum in the territory of another State. *Appleyard* v. *Massachusetts*, 203 U. S. 222.

A person, held in custody as a fugitive from justice under an extradition warrant in proper form which shows upon its face all that is required by law to be shown as a prerequisite to its being issued, should not be discharged unless it clearly and satisfactorily appears that he is not a fugitive from justice within the meaning of the Constitution and laws of the United States.

Where the requisition is based on an indictment for a crime committed on a certain day, without specifying any hour, the accused does not overcome the *prima facie* case by proof that he was not at the place of the crime for a part of that day, the record not disclosing the hour of the crime, and it appearing that the accused might have been at the place named during a part of the day.

On writ of error to review a final judgment in *habeas corpus* proceedings

this court must determine by the record whether the state court erred and its decision cannot be controlled or affected by an apparent admission of defendant in error that certain affidavits annexed to the petition were used without objection as evidence.

This court takes judicial knowledge of facts known to every one as to the distance between two neighboring cities and the time necessary to travel from one to the other.

THE facts are stated in the opinion.

Mr. John F. Geeting for plaintiff in error:

The term "fugitive from justice," as used in § 5278, Rev. Stat., does not apply to one who constructively commits a crime in another State, but only to one physically present within a State at the time of the commission of a crime and subsequently fleeing therefrom. *Hyatt* v. *Corkran*, 188 U. S. 691; *In re Tod*, 12 S. D. 386; *Ex parte Smith*, 3 McLean, 121.

The fact that the person demanded is a fugitive from justice is a jurisdictional prerequisite to an extradition warrant. The governor upon whom the demand is made has no authority to issue his extradition warrant, unless competent proof has been made to him that the person demanded was within the jurisdiction of the demanding State at the time of the commission of the crime in question and subsequently fled therefrom. *Ex parte Reggel*, 114 U. S. 642, 651; *Roberts* v. *Reilly*, 116 U. S. 80; *Hyatt* v. *Corkran*, *supra*; *In re Jackson*, 2 Flippin, 182.

A warrant for the extradition of a person cannot be lawfully issued, unless the accused has been indicted in a court of competent jurisdiction in the demanding State, or charged by affidavit before a magistrate in such State. § 5278, Rev. Stat.

While each State has a right to create its own code of criminal procedure, the practice of the demanding State must come within the requirements of § 5278. The filing of an information, although consistent with the practice of the demanding State, is not a basis for extradition proceedings; the accused is not indicted, neither is he charged by affidavit before a magistrate. *Ex parte Hart*, 63 Fed. Rep. 249. In Wisconsin, where a

justice of the peace sits as an examining magistrate, to hold to bail or to commit for trial, an affidavit is not necessary. The warrant issues upon oral testimony taken by the justice. § 4776, Wis. Rev. Stat.; *State* v. *Davies*, 62 Wisconsin, 305.

A written statement under oath made in the positive form, if made under circumstances, or as to matters which indicate that it was made upon information and belief, will be so considered. *M. & T. Bank* v. *Loucheims*, 8 N. Y. Supp. 520; *Tim* v. *Smith*, 93 N. Y. 91; *Hart* v. *Grant*, 8 S. D. 248; *S. C.*, 66 N. W. Rep. 622; *Finely et al.* v. *De Castroverde*, 22 N. Y. Supp. 716; *Crowns* v. *Vail*, 51 Hun, 204, 206; *Bank of Pittsburg* v. *Murphy*, 18 N. Y. Supp. 575; *Van Egan* v. *Herold*, 19 N. Y. Supp. 456; *Talbert* v. *Strom*, 21 N. Y. Supp. 719. See also *Griel* v. *Backius*, 114 Pa. St. 187, 190; *Davis* v. *Mouat Lumber Co.*, 2 Colo. App. 381, 387; *Shattuck* v. *Myers*, 13 Indiana, 46, 48, 49; *People* v. *Spaulding*, 2 Paige, 336.

It is not to be presumed that the alleged larceny was committed in the presence of the chief of police and the culprit allowed to escape. A criminal complaint which does not set out facts sufficient to constitute a crime is void, and does not confer jurisdiction upon the magistrate taking it. *Moore* v. *Watts*, Breese, 18, B. B. 42; *Housh* v. *People*, 75 Illinois, 487; *Sarah Way's Case*, 41 Michigan, 299; *United States* v. *Collins*, 79 Fed. Rep. 65; *The Shattuck Case, supra; Warenzak's Case* (note, 11 Am. Crim. Rep. 376); *Armstrong* v. *Van de Venter* (extradition case), 21 Washington, 682; *S. C.*, 12 Am. Crim. Rep. 327.

All of the elements of the crime must be stated. *State* v. *Murray*, 41 Iowa, 580; *Cranor* v. *State*, 39 Indiana, 64; *Slusser* v. *State*, 71 Indiana, 280; *Barfield* v. *State*, 39 Tex. Crim. Rep. 342; *S. C.*, 11 Am. Crim. Rep. 384; *State* v. *Cruikshank*, 71 Vermont, 94; *S. C.*, 11 Am. Crim. Rep. 385; *State* v. *Fiske*, 20 R. I. 416 (and see note, 11 Am. Crim. Rep. 375). A criminal complaint, being a statement of facts, should be at least as specific as an indictment. *Lawrence* v. *Brady* (extradition case), 56 N. Y. 182; *Vandever* v. *State*, 1 Marvel, 209.

The words "complaint" and "affidavit" are not synony-

mous; and accordingly, the word "affidavit," instead of "complaint," should be used in extradition proceedings. *State* v. *Richardson*, 34 Minnesota, 115.

In the following extradition cases the affidavit or complaint was held insufficient. *State* v. *Smith*, 21 Nebraska, 552; *Ex parte Spears*, 88 California, 640; *Ex parte McCabe*, 46 Fed. Rep. 363; *In re Heilbonn*, 1 Parker Cr. R. 429; *Ex parte Rowland*, 35 Tex. Crim. Rep. 108; *In re Coleman*, 15 Blatchf. 406.

Mr. E. C. Lindley, *Mr. John J. Healy* and *Mr. F. L. Barnett*, for defendant in error, submitted:

A fugitive from justice is a person charged with a crime in the courts of one State and being there wanted to answer for said offense is found in another State. Church on Hab. Cor., §§ 478, 480; *Roberts* v. *Reily*, 116 U. S. 80; *Ex parte Reggel*, 114 U. S. 642.

Wherever the validity of a governor's warrant is made the subject of judicial inquiry, the recitals in said warrant are to be taken *prima facie* as true. *Ex parte Stanley*, 25 Tex. Civ. App. 372; Church on Hab. Cor., 626, § 486; *Leary's Case*, 10 Ben. 197; *Hyatt* v. *Corkran*, 188 U. S. 709, 715; *Munsey* v. *Clough*, 196 U. S. 372.

The technical sufficiency of the indictment or complaint charging a crime against a defendant, will not be considered on writ of *habeas corpus* in extradition procedure—that is a question for the courts of the demanding State. *Davis' Case*, 122 Massachusetts, 324; *Brown's Case*, 112 Massachusetts, 409; *Ex parte Sheldon*, 34 Ohio St. 319; *State* v. *Schleman*, 4 Harr. (Del.) 577; *Ex parte Vorhees*, 32 N. J. L. 141; *Pea* v. *Brady*, 56 N. Y. 182; *Re Greenough*, 31 Vermont, 279; *Re Manchester*, 5 California, 237; *In re Leland*, 7 Abb. Pr. N. S. 64; *Re Briscoe*, 51 How. Pr. 422; *In re Clark*, 9 Wendell, 212. Technical defect of indictment apparent upon its face will not make void governor's warrant. Church on Hab. Cor., 316, § 246.

Evidence of an *alibi* cannot defeat extradition warrant. It is not conclusive evidence. *Hyatt* v. *Corkran*, 188 U. S. 715.

The issue of a warrant of extradition is wholly a matter of executive discretion, which discretion is not subject to review by the courts. Only questions of law and fact arising upon the face of the record are subjects of judicial inquiry. 55 L. R. A. 325; 7 Colorado, 384; 21 Iowa, 467; 116 U. S. 80; *In re Leary*, Fed. Cas. No. 8,162; 2 Spellman Ex. Rem., § 1291.

Evidentiary facts need not be set out in the affidavit. It is sufficient to make the charge explicit and certain. Hurd on Habeas Corpus (2d Ed.), 611.

MR. JUSTICE HARLAN delivered the opinion of the court.

This writ of error brings up for review a final judgment of the Supreme Court of Illinois in a case of *habeas corpus* arising under that clause of the Constitution providing that "a person charged in any State with treason, felony, or other crime, who shall flee from justice and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime;" also, under section 5278 of the Revised Statutes, which provides, among other things, that "whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the Governor or Chief Magistrate of the State or Territory from whence the person so charged has fled, it shall be the duty of the executive authority of the State or Territory to which such person has fled to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear."

It appears from the record that the Governor of Wisconsin

made his requisition upon the Governor of Illinois, stating that John McNichols (the present plaintiff in error) was charged by affidavit with the crime of larceny from the person of one Thomas Hansen—a crime under the laws of Wisconsin—committed in the county of Kenosha, Wisconsin, and that he had fled from the justice of that State and taken refuge in Illinois, and requiring that McNichols be apprehended and delivered to the appointed agent of Wisconsin, who was authorized to receive and convey the accused to Wisconsin, there to be dealt with according to law. Accompanying the requisition were duly certified copies of three documents: 1. An official application to the Governor of Wisconsin by the District Attorney for Kenosha County for a requisition upon the Governor of Illinois for McNichols as a fugitive from the justice of Wisconsin, it being stated in such application that McNichols was there charged by affidavit before a Justice of the Peace with the crime of larceny from the person committed in that county on the thirtieth day of September, 1905. 2. A verified complaint or affidavit before a Wisconsin Justice of the Peace, alleging that McNichols did, on the thirtieth day of September, A. D. 1905, at the city of Kenosha, feloniously steal, take and carry away from the person of Thomas Hansen, against his will, two hundred dollars, lawful money of the United States, etc. 3. A warrant of arrest issued by such Justice of the Peace, based on the above affidavit, for the apprehension of McNichols.

The Governor of Illinois, in conformity with the demand of the Governor of Wisconsin, issued his warrant for the arrest and delivery of McNichols to the agent designated by the Governor of the latter State. That warrant recited—and its recitals are important—: "The Executive authority of the State of Wisconsin demands of me the apprehension and delivery of John McNichols, represented to be a fugitive from justice and has moreover, produced and laid before me the copy of a complaint and affidavit made by and before a properly empowered officer in and of the said State in accordance with the laws thereof charging John McNichols, the person so de-

manded, with having committed against the laws of the said State of Wisconsin the crime of larceny from the person which appears by the said copy of a complaint and affidavit certified as authentic by the Governor of the said State now on file in the office of the Secretary of State of Illinois, and being satisfied that said John McNichols is a fugitive from justice and has fled from the State of Wisconsin," etc.

Having been arrested under the authority of that warrant, and being in the custody of the sheriff of Cook County, Illinois, McNichols presented his petition to the Supreme Court of that State—whose jurisdiction in the premises is not disputed—praying to be discharged from custody. That petition states that prior to the issuing of the above extradition warrant he was arrested upon a warrant issued by a Justice of the Peace in Chicago, based upon the supposed criminal offense, and that he presented his petition to the Criminal Court of Cook County for a writ of *habeas corpus*, setting forth that he was not a fugitive from justice; that pending that proceeding the above extradition warrant was issued and brought to the attention of the Criminal Court, and thereupon that court, because of the gravity of the case, suspended proceedings in order to give the accused an opportunity to apply to the Supreme Court of Illinois for a writ of *habeas corpus*.

The present petition for *habeas corpus* presented to the Supreme Court of Illinois contained this paragraph: "Your petitioner further shows that he has heard Thomas Hansen testify in a certain *habeas corpus* proceeding heretofore pending regarding this same matter [no doubt the above proceeding in the Criminal Court of Cook County], the said Thomas Hansen stating in his testimony that he was the same person mentioned in said complaint, and the said Thomas Hansen then and there testifying that the said supposed crime occurred on September 30, 1905, at the hour of *two* P. M., about a block and a half from the Northwestern depot in Kenosha, Wisconsin; and your petitioner states that he was not in the State of Wisconsin on September 30, 1905, and did not commit the said offense, and

in further proof thereof your petitioner herewith presents and attaches to this petition the affidavits of John F. Graff, William Oakley, Simon F. Bower, John A. Dennison, and Hugh Campbell, the same being marked respectively Exhibits C, D, E, F, and G." In one of the affidavits here referred to the affiant stated "that upon the thirtieth day of September, A. D. 1905, the said John McNichols to this affiant's personal knowledge was in the city of Chicago at about the hour of *one* o'clock P. M. and that this affiant remained in the company of the said McNichols until 2:15 P. M. and again met the said McNichols about three o'clock P. M. said day; this affiant further says that it would have been impossible for the said McNichols to have been in the city of Kenosha, State of Wisconsin, on the said thirtieth day of September, A. D. 1905." In the remaining five affidavits the respective affiants, using precisely the same words, stated "that upon the thirtieth day of September, A. D. 1905, said John McNichols to this affiant's personal knowledge was in the city of Chicago, the whole of the *afternoon* of the said day, this affiant and the said John McNichols *during the said afternoon* being in attendance at a baseball game in the said city of Chicago, between the Chicago and Boston teams, which said game was played at the West Side Ball Park."

The record shows that the case was heard in the Supreme Court of Illinois upon "the allegations and proofs" of the parties, and it was adjudged that the custody of the sheriff who held the accused should not be disturbed. But no bill of exceptions was taken embodying any evidence before the Supreme Court of Illinois. So that we do not know what were the "proofs" adduced by the parties. The sheriff stood upon his answer to the petition for the writ of *habeas corpus*. That answer, it will be recalled, embodied the extradition warrant issued by the Governor of Illinois.

Did the Supreme Court of Illinois err, when adjudging, as in effect it did, that the accused did not appear to be held in custody in violation of the Constitution and laws of the United States?

Some of the questions discussed at the bar have been concluded by decisions in former cases involving the meaning and scope of the above constitutional and statutory provisions. We will not extend this opinion by giving a full analysis of those cases. It is sufficient to say that the following principles are to be deduced from *Robb* v. *Connolly*, 111 U. S. 624, 639; *Ex parte Reggel*, 114 U. S. 642, 652–653; *Roberts* v. *Reilly*, 116 U. S. 80, 95; *Hyatt* v. *Corkran*, 188 U. S. 691, 719; *Munsey* v. *Clough*, 196 U. S. 364, 372; *Pettibone* v. *Nichols*, 203 U. S. 192, and *Appleyard* v. *Massachusettss*, 203 U. S. 222.

1. A person charged with crime against the laws of a State and who flees from justice, that is, after committing the crime, leaves the State, in whatever way or for whatever reason, and is found in another State, may, under the authority of the Constitution and laws of the United States, be brought back to the State in which he stands charged with the crime, to be there dealt with according to law.

2. When the Executive authority of the State whose laws have been thus violated makes such a demand upon the Executive of the State in which the alleged fugitive is found as is indicated by the above section (5278) of the Revised Statutes—producing at the time of such demand a copy of the indictment, or an affidavit certified as authentic and made before a magistrate charging the person demanded with a crime against the laws of the demanding State—it becomes, under the Constitution and laws of the United States, the duty of the Executive of the State where the fugitive is found to cause him to be arrested, surrendered and delivered to the appointed agent of the demanding State, to be taken to that State.

3. Nevertheless, the Executive, upon whom such demand is made, not being authorized by the Constitution and laws of the United States to cause the arrest of one charged with crime in another State unless he is a fugitive from justice, may decline to issue an extradition warrant, unless it is made to appear to him, by competent proof, that the accused is substantially charged with crime against the laws of the demanding

State, and is, in fact, a fugitive from the justice of that State.

4. Whether the alleged criminal is or is not such fugitive from justice may, so far as the Constitution and laws of the United States are concerned, be determined by the Executive upon whom the demand is made in such way as he deems satisfactory, and he is not obliged to demand proof apart from proper requisition papers from the demanding State, that the accused is a fugitive from justice.

5. If it be determined that the alleged criminal is a fugitive from justice—whether such determination be based upon the requisition and accompanying papers in proper form, or after an original, independent inquiry into the facts—and if a warrant of arrest is issued after such determination, the warrant will be regarded as making a *prima facie* case in favor of the demanding State and as requiring the removal of the alleged criminal to the State in which he stands charged with crime, unless in some appropriate proceeding it is made to appear that he is not a fugitive from the justice of the demanding State.

6. A proceeding by *habeas corpus* in a court of competent jurisdiction is appropriate for determining whether the accused is subject, in virtue of the warrant of arrest, to be taken as a fugitive from the justice of the State in which he is found to the State whose laws he is charged with violating.

7. One arrested and held as a fugitive from justice is entitled, of right, upon *habeas corpus*, to question the lawfulness of his arrest and imprisonment, showing by competent evidence, as a ground for his release, that he was not, within the meaning of the Constitution and laws of the United States, a fugitive from the justice of the demanding State, and thereby overcoming the presumption to the contrary arising from the face of an extradition warrant.

Turning now to the record of this case we find that the accused is in custody under an extradition warrant which appears upon its face to be warranted by the Constitution and laws of the United States. But we fail to find evidence sufficient to

overcome the *prima facie* case thus made by that warrant. It is said that the plaintiff in error was not in the State of Wisconsin on the day when the alleged larceny from the person of Hansen was committed; therefore, it is contended, he could not have committed the crime charged, and thereafter become a fugitive from the justice of that State. If the authorities of Wisconsin were bound by the date named in the requisition papers, which we do not concede (1 Pomeroy's Archbold's Cr. Pr. & Pl. 363), still the record presents no such case as is contended for by the accused. It was incumbent upon him, by competent proof, to rebut the presumption arising on the face of the extradition warrant and requisition papers that he was a fugitive from justice for a crime committed in Wisconsin on September 30, 1905. As already stated, no bill of exceptions embracing the evidence was taken and we cannot, therefore, say that the proofs established the fact that the accused was not a fugitive as charged, as stated in the warrant of arrest.

It is argued, however, that the affidavits accompanying the petition for *habeas corpus* show that the accused was not in Wisconsin when the crime in question was alleged to have been committed. The record does not justify us in assuming that those affidavits were in fact offered as evidence, or were used with the consent of the State as evidence, or were treated as evidence by the Supreme Court of Illinois. It is true that the counsel for the sheriff uses some language in his brief which is construed as admitting that the affidavits were used, without objection, as evidence. But such an apparent admission cannot control or affect our decision; for, whether the Supreme Court of Illinois erred in its final judgment must be determined by the record before us.

But if it be assumed that the affidavits were accepted in the court below as evidence the result must still be the same; for the affidavits do not satisfactorily establish the fact that the accused was absent from Wisconsin when the alleged crime in question was committed. The charge, as set forth in the requisition papers, was that he committed the crime of larceny

from the person of Hansen on the thirtieth day of September, 1905—no particular hour of that day being mentioned—while the affidavits import nothing more than that McNichols was at Chicago at one o'clock and during the whole of the *afternoon* of that day. The affidavits give no account of the whereabouts of McNichols during the forenoon of the day specified in the papers accompanying the requisition by the Governor of Wisconsin. We know, because everyone knows without the testimony of witnesses, that Kenosha, the place of the alleged crime, is only a short distance—within not more than one hour and a half's travel, by rail—from Chicago. It was entirely possible for the accused to have passed the whole or a larger part of the forenoon of September 30, in that city, and yet have been in Chicago at one o'clock and during the whole afternoon of the same day. So that the affidavits relied on by no means prove the absence of the accused from Wisconsin during the whole of the thirtieth day of September.

Here, it is suggested, that the crime, if committed at all, was committed at *two* o'clock of September 30, while the affidavits show that McNichols was at Chicago at *one* o'clock and during the entire afternoon of that day. So far as the record discloses this suggestion finds no support in anything said or done at the hearing by those who opposed the discharge of the accused. The requisition papers do not state that the alleged crime was committed at two o'clock or at any other specified hour of the day named. The whole foundation for the suggestion was an allegation in the petition for the writ, in this case, to the effect that the accused had *heard* Thomas Hansen testify in another *habeas corpus* proceeding that the crime was committed at two o'clock on the day named. But the record does not show that Hansen or any other person so testified in the present case. Indeed, it does not appear that anyone testified orally before the court—not even McNichols. Upon the record before us it must be taken that McNichols was charged with committing the crime in question on the thirtieth day of September, and that he could have been at

Kenosha during the forenoon of that day, although he may have been, as stated in the affidavits, in Chicago during the whole of the afternoon of the same day. So that the accused entirely failed to overcome the *prima facie* case made by the official documents before the court of his having become a fugitive from the justice of Wisconsin, after committing a crime against its laws on the thirtieth day of September, 1905.

When a person is held in custody as a fugitive from justice under an extradition warrant, in proper form, and showing upon its face all that is required by law to be shown as a prerequisite to its being issued, he should not be discharged from custody unless it is made clearly and satisfactorily to appear that he is not a fugitive from justice within the meaning of the Constitution and laws of the United States. We may repeat the thought expressed in *Appleyard's case*, above cited, that a faithful, vigorous enforcement of the constitutional and statutory provisions relating to fugitives from justice is vital to the harmony and welfare of the States, and that "while a State should take care, within the limits of the law, that the rights of its people are protected against illegal action, the judicial authorities of the Union should equally take care that the provisions of the Constitution be not so narrowly interpreted as to enable offenders against the laws of a State to find a permanent asylum in the territory of another State."

No error appearing in the record, the judgment of the Supreme Court of Illinois must be affirmed.

It is so ordered.